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COMMITTEE ON JUDICIARY

February 24, 2006

LB 1026, 1227, 954, 1044, 1190, 1078

The Committee on Judiciary met at 1:30 p.m. on Friday, February 24, 2006, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1026, LB 1227, LB 954, LB 1044, LB 1190, and LB 1078. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Ernie Chambers; Mike Flood; Mike Foley; and Mike Friend. Senators absent: Jeanne Combs.

SENATOR BOURNE: I think all of our colleagues are out enjoying the nice weather, but they'll be here shortly. Welcome to the Judiciary Committee. This is our 15th day of committee hearings. We have six bills on the agenda for this afternoon. My name is Pat Bourne. I'm from the 8th Legislative District in Omaha. To my left is Senator Friend, also from Omaha; to my immediate left is the committee clerk, Laurie Vollertsen; to my right is Jeff Beaty, the committee's legal counsel; getting ready to sit down is Senator Pedersen from west Omaha.

SENATOR DW. PEDERSEN: It is Elkhorn, Nebraska, thank you. (Laughter)

SENATOR BOURNE: To my left, again, is Senator Aguilar from Grand Island. I will introduce the other senators as they arrive. Please keep in mind that from time to time throughout the afternoon, senators will come and go. If they happen to leave while you are testifying on a bill, please don't take it personally. They're simply conducting other legislative matters. If you plan to testify on a bill, we're going to ask that you sign in advance at the on-deck area, the two chairs with the yellow signs on them. Please enter your information accurately and legibly so our transcribers can enter that accurately into the permanent record. Following the introduction of each bill, I'll ask for a show of hands of those folks wanting to speak on a particular measure. We'll first have the introducer, then we will take proponent testimony, then we'll have opponent testimony, and then we'll take neutral testifiers with the senator closing. When you come forward to testify, please clearly state and spell your name for the record. All of our hearings are transcribed, so your spelling of your name will help our transcribers immensely. Due to the large

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 2

LB 1026

number of bills we hear here in the Judiciary Committee, we do utilize the timing system. Senators introducing bills get five minutes to open, three minutes to close if they choose to do so. All other testifiers get three minutes exclusive of any questions the committee may ask. The yellow light comes on as a one-minute warning, and the red light indicates time has expired. Please conclude your testimony. The rules of the Legislature state that cell phones are not allowed, so if you have a cell phone, please disable it. Also, reading someone else's testimony is not allowed. If you have a letter that you want submitted from a particular group, just give that to us. We'll make that of the record, but we'd prefer you would not read that. With that, Senator Pahls is here to open on Legislative Bill 1026. As the Senator makes his way forward, can I have a show of hands of those folks here to testify in support? I see two. And the supporters, if you would make your way to the front row and sign in, be ready to testify, please. Can I have a show of hands of those folks here in opposition? I see one. With that, Senator Pahls, welcome.

LB 1026

SENATOR PAHLS: (Exhibits 1, 2) Good afternoon, Chairman Bourne and committee members. I need to tell you I'm color blind, so I may not be able to follow the time.

SENATOR BOURNE: Well, we'll let you know, Senator.

SENATOR PAHLS: I figured so. (Laughter) My name is Rich Pahls, R-i-c-h P-a-h-l-s. I represent District 31, the Millard of Omaha. Today, I bring forth LB 1026, which requires a former employer to provide information regarding a person applying for the position of peace officer. I introduced this bill on behalf of the Omaha City Council. The council adopted a resolution calling for this type of legislation. I have copies of the resolution, I should say, and I think you have that in front of you. We used a similar law in Nevada to draft the bill, and I have provided copies of that Nevada law. I think you also have that. Under the bill, any law enforcement agency that is reviewing the application for a peace officer opening may request a current or former employer of the applicant to provide information about the applicant's employment. Presently,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 3

LB 1026

some employers are reluctant to provide information because of civil liability concerns. If state law requires the employer to provide the information, the employer would be protected from the liability for providing that information. And that's probably what we would like to be in the meat of the law. It is important that law enforcement agencies be given the tools they need to find qualified candidates. The protection of the public demands higher scrutiny of past employment, perhaps more so than other positions. The request for information must be done in writing and must include a release signed by the applicant. Now here are some examples of the kind of information that can be requested: dates of employment; compensation paid; the actual application used to obtain the job; a written evaluation; a record of attendance; disciplinary records; whether the employer would rehire the applicant; and reasons for termination of employment, if that was an issue. This bill allows the employer to request further information, which may be of concerns for some potential candidates. And I would point to you on page 2, line 15 and 16, the wording there. You will find that in the green copy. If any other state or federal law prohibits disclosure of the information, the employer would be exempt from complying. The agency requesting the information is required to maintain the confidentiality of the information received. The information may be shared with another law enforcement agency if the applicant has applied with that agency. Law enforcement agencies that are included in the bill are town marshals, city police departments, sheriff's offices, and the state patrol. If a current or former employer receives a request for information as provided in the bill, the employer is required to supply that information, although the bill does not provide for any penalties for noncompliance. Thank you.

SENATOR BOURNE: Thank you. The committee has been joined by Senator Flood from Norfolk. Are there questions for Senator Pahls? Seeing none, thank you. First proponent.

DIANA KELLY: My name is Diana Kelly, D-i-a-n-a K-e-l-l-y. I'm a lieutenant from the Omaha Police Department. Imagine if a law enforcement agency did not do everything they possibly could when investigating a police applicant's background. Sometimes we are forced to hire individuals without a key piece of information, an honest and complete

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 4

LB 1026

job reference from a former employer. This is an excerpt from a letter received from one of my backgrounds investigators from a major grocery chain. To whom it may concern: We contract the work number for everyone to handle our request for verification of employment. Information obtained from the work number will be current year plus two years previous. Our processing fee for that information is \$30. Any additional information will require the issuance of a court ordered subpoena. Certified law enforcement officers carry at a minimum a firearm. Then they may carry Mace, a baton, and a TASER, and these companies tell us we have to pay for basic information? And we have to get a subpoena in order to get additional information on an applicant? You may ask why do we need an employee reference check? Use other references such as networking. Yes, this law would make our job easier. But more importantly, it will make it thorough. How a person has performed in the past is the best indicator of how they will perform in the future. An investigator who has access to personnel file is going to be looking at factual, verifiable information and not taking verbal recommendations or nonrecommendations at face value. We are not looking for personality conflicts. If there is something negative in that file, it is the employer's responsibility to have informed the employee that it is in their file. All applicants sign a release allowing background investigators to contact former employers. Nebraska is among a small and dwindling number of states that have not enacted legislation to protect employers who give job references on current or former employees. Case in point: A major food chain cannot provide any other information other than a former employee had resigned, however, was ineligible for rehire. The investigator contacted the manager directly, who wanted to tell the investigator what happened, however, was nervous, and told the investigator to call back in one hour. In the meantime, the manager called corporate offices and was instructed not to give out any information or they could be sued. This applicant was given a job offer from the city of Omaha, and two weeks before he was to begin, an anonymous call stated that there was allegations of sexual harassment in his previous jobs. Now that the investigator had something to work with, through additional follow up, it was confirmed that this applicant had been involved in sexual harassment at this place of employment and two other businesses as well. The job offer was rescinded. A bad hiring decision

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 5

LB 1026

can create untold administrative, financial, and legal difficulties. Negligent hiring can create, is a failure to exercise reasonable care when selecting new employees. In this day and age of homeland security concerns and workplace violence, we need to have the information available to us from the most important reference, previous place of employment. And that is my testimony and I'd be happy to entertain any questions.

SENATOR BOURNE: Thank you. Any questions for, is it lieutenant,...

DIANA KELLY: Yes.

SENATOR BOURNE: ...Lieutenant Kelly? Are there questions? Run us through what you do now for background checks.

DIANA KELLY: We do a personal history statement in which the applicant will fill out, it will list personal references, job references, any kind of criminal history, school references, financial history, and we will go ahead and follow up on those with contacts through the information that they provide us. Once we contact those personnel that they listed, we also try to cultivate other sources and talk to additional people to ascertain that they're just not listing the good information. Upon completion of that part of the process, then they are subject to a polygraph exam, and then they are, if they are viable, then they're offered a chief's interview. And then those that are selected move onto medical, where we just obtain more information.

SENATOR BOURNE: Do you ask questions during the polygraph about previous employment?

DIANA KELLY: Yes, we do.

SENATOR BOURNE: Okay. Are there any other, do you do an FBI background check? A Nebraska State Patrol background check?

DIANA KELLY: Correct. We do all of that, yes.

SENATOR BOURNE: , I don't know the answer to this. I will tell you we've had bills similar to this as it relates to not just geared towards police officers, but in general,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 6

LB 1026

providing for some immunity for information. Is that "waiveable"? Meaning if I apply with you, could, if I signed an agreement saying that I would forego any suit against my previous employer, is that something would hold up or?

DIANA KELLY: We do have them sign waivers. I do not know if it's been tested, so I cannot answer that fully.

SENATOR BOURNE: Okay. Further questions for the Lieutenant? Senator Aguilar.

SENATOR AGUILAR: Yes. Miss Kelly, you talked about a situation where an individual had been guilty of child abuse and harassment?

DIANA KELLY: Just sexual harassment in the workplace.

SENATOR AGUILAR: Okay. As far as the child abuse, wouldn't that have been available on a police record somewhere?

DIANA KELLY: There was no child abuse. I'm sorry if I misspoke.

SENATOR AGUILAR: What were the charges?

DIANA KELLY: It was sexual harassment in the workplace. He was working at this fast food chain and he was making inappropriate comments to a coworker.

SENATOR AGUILAR: Okay. I thought you mentioned two charges.

DIANA KELLY: No.

SENATOR AGUILAR: Okay.

SENATOR BOURNE: Further questions? Do you also, as part of the background check, search cases that have been filed, whether civil or criminal?

DIANA KELLY: Yes, we do.

SENATOR BOURNE: Okay. And that didn't show up in that regard?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 7

LB 1026

DIANA KELLY: That did not show up.

SENATOR BOURNE: Okay. Further questions? Seeing none, thank you.

DIANA KELLY: Thank you.

SENATOR BOURNE: The committee has been joined by Senator Foley from Lincoln. Will the next proponent come forward? If there are any other proponents, please make your way to the front row and sign in. Welcome.

LARRY THOREN: (Exhibit 3) Senator Bourne and members of the Judiciary Committee, good afternoon. I'm Larry Thoren, L-a-r-r-y T-h-o-r-e-n. I'm the chief of police for the city of Hastings and I am testifying on behalf of the Police Chiefs Associations of Nebraska. One of the more important functions of a police executive is to hire the right people. And at times, we're very frustrated because we cannot obtain factual information on some of our candidates. And the Lieutenant gave some examples of some of the obstacles we're met with. The best predictor of future behavior is one's past behavior. Now, it's not always private industry that is withholding that information. Sometimes, it's fellow law enforcement officers or chiefs or law enforcement in other states. LB 1026 will also address what is known as rogue cops, police officers that are passed from department to department and given either neutral or good recommendations when there's actually negative behavior in their past. Our communities demand and deserve people of good character and integrity and morality in policing. What questions can I answer for you?

SENATOR BOURNE: Questions for the Chief? Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Chief, thanks for coming in, by the way, and for the information. You know, I've had an opportunity to hire a few people. I mean, one of the things that you mentioned in your testimony is that you can identify a certain pattern of behavior, you know, based on their historical track record. If somebody fills out an application, I'm sure I'm not saying I'm an expert, but I can look at that application and see that that person has had X amount of jobs in X amount of years. One of the questions that would occur to me is to ask that

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 8

LB 1026

person flat out, you know, you're all over the board here. You've had five jobs in five years. Depending on the answer, that's going to affect my decision making. But my decision making might be affected anyway if I see somebody with five jobs in five years, I could have a problem with that, I could potentially have a problem with that. My question is this: Isn't the human resources process, isn't a lot of it investigative by nature? I could see all kinds of things on paper and I can look at all kinds of things on a resume. I can look at all kinds of information and there's an element of the unknown. And some of it, it's just, it's got feel. I mean, the hiring that I've done, it's got feel, it's references, it's people that communicate with me the status, the history, the background of that particular person. Some of those references can do that under law right now. Wouldn't that be true? I guess what I'm...my question, to sum it up, I'm signed onto this bill, but I've got to be convinced why a bill like this is necessary, because I've been able to do some of these things in the last 10-15 years of my life that you and Lieutenant Kelly have talked about. I've been able to identify those type of indicators. I'm not convinced yet as why we really wouldn't need to go to these steps.

LARRY THOREN: In the selection process for a police officer, there are various things that you do. You have the person history statement, polygraph, psychologicals, physical, physical fitness, and naturally, you're interviewing references in jobs. And if somebody omits a job from their personal history statement, an omission is automatic grounds for...

SENATOR FRIEND: Yeah, very true, Chief, but I can identify that in the interview process. I mean, it's a, I guess what I'm saying is I didn't hearing anything necessarily in testimony that says, we have a really major problem here. And I'd like to know why, you know, what kind of problem we're trying to fix. I mean, are there instances in Hastings that you've run into? I guess, give me a hypothetical or a real situation.

LARRY THOREN: I think there's instances across law enforcement that our younger generation now is a more fluid generation and moves from job to job frequently, and sometimes there is some valid reasons for that. And

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 9

LB 1026

sometimes it's due to inappropriate behavior. And if you have information about an individual that's going to be, if you're an employer, and you have information about an individual that's going to be a potential police officer in your community or another community, it's important to me as the decision maker to know what that information is. It may be negative information that could put somebody who's abusive, who's probably never been arrested but been abusive, or there's many crimes that occur in private industry that never get the attention of law enforcement, that people let them resign and go onto other things. We don't want thieves. We don't want people who are brutal. We don't want people who lie, cheat, or steal in this business. And, you know, while we...

SENATOR FRIEND: Yeah. No, thanks Chief, and I don't mean to cut you off. And that's a very legitimate answer. I appreciate that. I don't think we want them in any business. I mean, we're handing out to the law enforcement community some things that, you know, I work at a bank. And the bank has got to use some pretty unique and creative ways to try to find good employees that aren't going to do those types of things, either. But they're not going to have this. I know it's a different business, and there's an important, significant difference. But that bank has, you know, I mean, do you want these type of people working, you know, in that environment, that could cause...Lieutenant Kelly brought up a sexual harassment problem. That's not a felony, and that might have been, what Lieutenant Kelly brought up, might have been, you know, false accusation.

LARRY THOREN: That may have been. And the difference is I would choose to do business with your bank or not. But as a police officer in your community, citizens don't have that choice because we're putting that police officer out in community to deal with whatever. You know, we all recruit from humanity, and we're going to deal with all the frailties of humanity. And our job is to select honest people with good character who will tell the truth.

SENATOR FRIEND: Fair enough. Thanks.

SENATOR BOURNE: Further questions? Chief, could you give us a sense of, you and your department, any specific problems that you've had regarding personnel that the ability to have

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 10

LB 1026

an exchange of information with their previous employer would have prevented?

LARRY THOREN: Without talking about specific personnel issues, I have had more than one employee that was hired that if the employer would have told me information, the person wouldn't have been hired. And subsequently, that one or more were terminated.

SENATOR BOURNE: But are you assuming the information the previous employer had would have been beneficial to you in your hiring decision?

LARRY THOREN: Yes.

SENATOR BOURNE: So how did it come out, then, subsequent to the hiring?

LARRY THOREN: Many times, it's hard to hide from the truth. And the truth eventually catches up with you. And, you know, it's frustrating when I talk to a fellow police chief and they just say, well, he worked here for three years and decided to move on in his life, and then go into private industry and come back into law enforcement two or three years later stating that the private juncture did not work out well. And you're trying to determine what the background is on these individuals because, you know, again, we need people with strong character in this business.

SENATOR BOURNE: Further questions? Seeing none, thank you.

LARRY THOREN: Thank you.

SENATOR BOURNE: Other proponents? If there are any other proponents, if you could make your way to the front row. Are you a proponent?

ALLEN BALDWIN: Yes.

SENATOR BOURNE: Welcome.

ALAN BALDWIN: My name is Alan Baldwin. I'm the chief of police in Seward to kind of help with your questioning. Senator, I have run into the situations where I've been interviewing or attempt to interview employers and coworkers

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 11

LB 1026

where they're reluctant, at best, to talk about their coworkers. Even with the release of information form, they're still somewhat reluctant. I think the bottom of this is we need to try to do our best to protect the citizens from potential, less than favorable employees. That's the bottom line, whether it be for the banking or for the police department. In certain positions, we don't want to hire individuals that shouldn't be hired there. The other thing I was thinking about was, if we have two candidates and one of the candidates we're able to do a proper background investigation, and another candidate we're not able to a very good background investigation because we're being stonewalled by employers, and we're only to hire one position, which one do you think we're going to hire? We're going to hire the one where we can get to the information the quickest to. Right, wrong, or indifferent, that's the way it's going to go. And then the issue of honesty, those are some of the questions that we want to be able to make sure that we can ask of the employers or coworkers. We're mandated by state statute to do background investigations. We're mandated by state statute or requirements of the police academy to make sure that those are thorough background investigations. All we're simply doing is trying to ask for your assistance to make sure we work within those mandates.

SENATOR BOURNE: Thank you. Are there questions of Chief Baldwin? Is it chief?

ALAN BALDWIN: Yes.

SENATOR BOURNE: Senator Aguilar.

SENATOR AGUILAR: Thank you, Chief. I probably should have asked this question to the Lieutenant, but I'll just hypothetically ask it to you. Like in the scenario she described, I guess she didn't really say whether or not the sexual harassment had been proven. And knowing that many companies, any time there's a charge of sexual harassment, would automatically terminate the employee just to protect themselves.

ALAN BALDWIN: Senator, I...

SENATOR AGUILAR: Let me finish up. My actual question is,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 12

LB 1026

you know, in your scenario, as you're interviewing candidates, would you consider someone under those circumstances or would you go to the trouble of investigating, find out whether or not those charges were accurate?

ALAN BALDWIN: First of all, I thank you for the question. My understanding was the Lieutenant had advised that it was more than one type of sexual harassment type of charges against this, or indicated, so it's multiple ones. And I was also under the belief that they did investigate that and confirmed that through the information. Just because we're told negative information does not necessarily mean that we're going to go down that road. Actually, if we're doing a backtrack investigation, we talk to an ex-spouse of a potential candidate, we may be told information that's valid or not valid. But nonetheless, we need that information to pursue our investigation. And it's the same way. At least, then, it's something to take a look at and to go on. What I don't want to have happen, and which does happen, is where we get these allegations or information, and then we get just a portion of it, and then the person says, I can't tell you anything more. I'm not going to tell you anything more about it. And so, that's what bothers me when I try to do a background investigation off these employees. And then I'm concerned about, when we have to sign, I have to sign a piece of paper before they can go in the police academy, saying these people fit within this category and that they're worthy of going to the police academy and worthy of becoming a police officer and going through that. I have a challenge with that if you're not able to confirm all that information.

SENATOR AGUILAR: The question was, would you investigate? You answered that right off. Thank you. Good answer.

SENATOR BOURNE: Further questions for Chief Baldwin? Seeing none, thank you.

ALAN BALDWIN: Thanks.

SENATOR BOURNE: Are there any other proponents? We'll move to the opponents. Have you already signed in?

JANE BURKE: I did, thank you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 13

LB 1026

SENATOR BOURNE: Okay. If there are any other opponents, please make your way to the front row and sign in. Welcome.

JANE BURKE: Thank you. My name is Jane Burke, and I'm here on behalf of the Lincoln Police Union...

SENATOR BOURNE: Could you spell your last...

JANE BURKE: ...B-u-r-k-e...

SENATOR BOURNE: ...thank you.

JANE BURKE: ...the Lincoln Police Union, the Fraternal Order of Police Lodge 2, which is Douglas County Sheriff's deputies union, and the Omaha Police Union, IUPA, which is Lodge 101, in opposition to this bill. There are several things that I heard the proponents say that I think are important to touch on first. Chief Baldwin said that the first person to receive the information will get hired. I just want to touch base on that. That's always going to be the case, the response time. This bill doesn't have anything to do with response time of an employer. Whoever responds, if that's his criteria and that's who he hires, this doesn't have anything to do with it. I think one thing he said that's key is this bill, he believes, is to protect citizens. I believe that this bill goes beyond that. What a law enforcement officer, what you need in hiring a law enforcement officer, is something to protect the public interest. And we've already provided that through statute. We've added a provision that applies only to law enforcement, and that's the statute that allows for polygraphs for hiring purposes and ongoing polygraphs during the course of employment for maintaining employment in a law enforcement agency. The law enforcement agencies already have the ability to do the background check, criminal check, financial check, State Patrol check, polygraph. They've covered all of the bases. Why do they need to know some additional information, especially when that information may in and of itself be biased. For example, take a small agency where there's a conflict between two or three people. That person may leave on his or her own initiative, or may be asked to resign or terminated, what does this do to ensure that an honest evaluation is being given. I don't even know what kind of evaluation would be given based upon

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 14

LB 1026

the language that's in the statute. The very last line on page 2 says that the hiring agency will be provided a written evaluation of performance. I don't know what that is. It's not described. Why is that necessary, and why are we trying to fix something that's not broken. We have a lot of good mechanisms in place for hiring. Why do we need to know about attendance? Why do we need to have a written evaluation? Why do we need the formal rehiring statement with all of the other information that's available. So there's a number of different things in this, I think, that are over-reaching. Additionally, it may open the door to other places besides law enforcement in terms of being attached to the public records law. And if those are important for law enforcement, then why aren't they important now? I mean, why isn't this important for a nurses, for firefighters, et cetera? Why is this just for law enforcement? So I think, in summary, this is overly broad and doesn't do any more to enhance the hiring process than we already have, or that what good leg work would do. Are there any questions?

SENATOR BOURNE: Are you an officer?

JANE BURKE: I am not.

SENATOR BOURNE: Are there questions for Ms. Burke? Seeing none, thank you. Other opponents? Are there any neutral testifiers? Senator Pahls to close.

SENATOR PAHLS: It was pointed out to me there are just a couple of things we maybe need to think about. Unless the employers are legally required to turn over employment history, they may and they do refuse. I've been told that. And people sworn to serve and protect need a thorough process because they have such an important, life-changing job. And it's also brought up to me that union fears are misplaced. This bill helps to ensure only the most qualified will be hired.

SENATOR BOURNE: Questions for Senator Pahls? Seeing none, thank you. That will conclude the hearing on Legislative Bill 1026. (See also exhibit 30) Senator Cornett is here to open on Legislative Bill 1227. As the Senator makes her way forward, can I have a show of hands of those folks here wanting to testify in support of this next bill. I see one. Those in opposition? I see none. Senator Cornett.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 15

LB 1227

LB 1227

SENATOR CORNETT: Good afternoon, Senator Bourne and members of the Judiciary Committee. My name is Abbie Cornett and I represent the 45th Legislative District. This afternoon, I am presenting LB 1227, which would provide for language changes in state statute to reflect federal requirements of the National Instant Criminal Background Check System, NICS. These changes are needed to ensure the Nebraska State Patrol and Nebraska firearm vendors continue to have access to this system. The NICS system is used to obtain a handgun purchase permit certificate as required by state Statute 69-2,403 through Statute 69-2,406 and by the Nebraska vendors when completing the required background checks during a transaction involving a weapon. In the past, the legislative body has declared a valid interest in the regulation of purchase, lease, rental, and transfer of handguns, and requiring a certificate prior to these events serves a valid public purpose. The U.S. Department of Justice had asked Nebraska State Patrol to make these modifications by September 30, 2005. That date has since passed. However, this is the first legislative session available to address the need. In specific, LB 1227 defines a criminal history records check includes citizenship information as part of the certificate application process, extends the time allowed to conduct an investigation prior to issuing the certificate from two to three days, and specifically directs that a criminal history records check include a check of the criminal history records of the Nebraska State Patrol and the Federal Bureau of Investigation's National Instant Criminal Backgrounds Check System. The provisions of LB 1227 do not substantively change the day to day operations of the Nebraska State Patrol. It does, however, satisfy the requirements of the U.S. Department of Justice. The Nebraska State Patrol will provide testimony today and will be available to answer any technical questions you may have. And I would be happy to answer any questions also. I do thank you ahead of time for consideration of this bill and I encourage you to advance LB 1227 to General File.

SENATOR BOURNE: Thank you. Are there questions for Senator Cornett? Senator, so this, we would lose compliance if we

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 16

LB 1227

do not pass this? Is that what I heard you say?

SENATOR CORNETT: That is my understanding. The U.S. Department of Justice asked us to make these changes effective 30 September 2005.

SENATOR BOURNE: What will we lose if the changes don't go into effect?

SENATOR CORNETT: I believe that we would lose our ability to do background checks or the ATF on purchasing handguns.

SENATOR BOURNE: And when did this come to the administration's attention?

SENATOR CORNETT: That I do not know. It came to my attention prior to this legislative session.

SENATOR BOURNE: Okay. I'm kind of shocked, actually, because this is the first I've heard of this.

SENATOR CORNETT: Well, I did not know about it until, again, prior to this legislative session, and I was approached by the State Patrol with the details in this matter and requested to submit this legislation so we would be in compliance.

SENATOR BOURNE: Well, I guess we'll hear from the State Patrol as to why they haven't notified the Judiciary Committee that there was an issue. Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Senator Cornett, does this have to do with law enforcement?

SENATOR CORNETT: No, handgun registration, like if you wished to go in and purchase a handgun.

SENATOR DW. PEDERSEN: That's only mandatory, it was my understanding, in the Omaha area.

SENATOR CORNETT: Background checks, I believe, are mandatory. You're talking about a registration of a gun, like a vendor is not supposed to sell you a gun if you're a felon.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 17

LB 1227

SENATOR DW. PEDERSEN: Okay. Then that makes sense.

SENATOR CORNETT: Yes. We're not necessarily talking about handgun registration, but the background checks involved in selling.

SENATOR DW. PEDERSEN: The background checks for when you buy them.

SENATOR CORNETT: Correct.

SENATOR DW. PEDERSEN: Thank you.

SENATOR BOURNE: Senator Aguilar.

SENATOR AGUILAR: Thank you. Senator Cornett, in your statement of intent, you talk about including citizenship information as part of certification application process. Do you have to be a citizen to apply for a permit?

SENATOR CORNETT: To apply for a handgun permit? I believe you do, but I'm not exactly sure on that part.

SENATOR AGUILAR: What about situation of like diplomatic immunity?

SENATOR CORNETT: I'm sorry.

SENATOR AGUILAR: Situations like diplomatic immunity where maybe there was a foreign dignitary.

SENATOR CORNETT: That's also under federal law, and I am not sure exactly what is covered under diplomatic immunity, sir.

SENATOR AGUILAR: Okay. Thanks.

SENATOR BOURNE: Further questions? Senator Cornett, it sounds like the communication deficiency is between myself and my staff, not between the State Patrol and the committee, so I apologize.

SENATOR CORNETT: Oh, okay. Like I said, I said, I was just made aware of this prior to this session, so we agreed to carry the bill because there does appear to be an immediate

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 18

LB 1227

need.

SENATOR BOURNE: Further questions? Seeing none, thank you. First testifier in support. Welcome.

JOHN SHELTON: (Exhibit 4) Thank you, Senator Bourne. Good afternoon, Senator, and members of the Judiciary Committee. My name is Lieutenant John Shelton, J-o-h-n S-h-e-l-t-o-n, and I serve as commander of the Criminal Identification Division of the Nebraska State Patrol. I'm here today to provide information regarding LB 1227. The purpose of this bill is to make language changes that address requests from the U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives related to criminal history record checks. The U.S. Department of Justice has notified the State Patrol that changes are needed in order for the State Patrol to continue to have access to the National Instant Criminal Background Check System, which is used to perform criminal history record checks for the purchase of weapons. This type of record check is required by Nebraska State Statutes 69-2,403 through Statute 69-2,406, for any person desiring to obtain a handgun purchase certificate. Additionally, the NICS database is utilized by all Nebraska vendors to complete the required background checks on those purchasing weapons other than handguns. Under LB 1227, citizenship information would be required. This information is a federally required component needed to conduct immigration and customs enforcement checks as part of the criminal history records check. It would add country of citizenship, and in the case where the applicant is not a United States citizen, the place of birth and the alien or admission number would be required. The LB would modify the allotted time allowed for the application to be processed. It would change from two days to three days. Currently, the two day time frame is being met. However, the Department of Justice would like an expansion to three days to provide flexibility. Two other technical changes would be made as a result of the bill. It would define a criminal history record check and specifically direct the process to include a search of the FBI's National Instant Criminal Background Check System. This is the current practice of the State Patrol and would not affect daily operations. I thank you for your time and consideration. I'd be happy to answer any questions you may have.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 19

LB 1227

SENATOR BOURNE: Questions for Lieutenant Shelton? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Lieutenant, thank you for your testimony. Now this is a little off the beaten path, but in my district, law enforcement officers have talked to me about information that is available on NICS. Would you, first of all, describe to me what a patrol officer in a Nebraska community, say Norfolk or Omaha or the State Patrol, would receive from the dispatcher as far as information and what databases are checked when that information is requested?

JOHN SHELTON: Well, Senator, the NICS database is specifically used for running a check on the purchase of weapons. The NCIC check that I think you might be referring to is the FBI database for law enforcement checks of a person for criminal history backgrounds. That NCIC database is a separate database from the NICS database. However, they do have some of the same information.

SENATOR FLOOD: Now, do we run, do you check with this database that's the subject of LB 1227 during a routine traffic stop? Does it interface with the other database, the NCIC?

JOHN SHELTON: The NICS database will have additional information for qualifiers for purchasing weapons that the NCIC database will not. And it does not automatically check the NICS database when an NCIC check is ran. That is a specific function for the purchase of weapons through our current NICS system or through vendors that contact the FBI directly to run their NICS checks.

SENATOR FLOOD: So this NICS does not have anything to do with the patrol officer working the street. They're not going to check this database when they stop an offender to see if they...

JOHN SHELTON: No, Senator, they're not.

SENATOR FLOOD: Is there any way that this information could be made available to the patrol officer so that before they approach the vehicle, let's say we pass concealed weapon in this state. Because my interest would be, is there a way to

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 20

LB 1227

let that officer know before he or she leaves their patrol car, that the vehicle they just stopped, I guess that after they check the driver's license, that that individual owns a gun.

JOHN SHELTON: In relation to what I've seen proposed on CCW, is that your question, Senator?

SENATOR FLOOD: Yes.

JOHN SHELTON: This bill does not relate to CCW in the sense of some sort of proof of the possession of a CCW permit. This deals specifically with the ability for a citizen to purchase a weapon. Did I answer your question, Senator?

SENATOR FLOOD: I guess, yeah, I think you did. I think I had this NICS confused with NCIC and...

JOHN SHELTON: It's easy to do.

SENATOR FLOOD: ...and I just want the officers to know when they get out of the car what they're dealing with the best that they can.

JOHN SHELTON: I would as well, Senator. That would be a very important aspect.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Further questions? So Lieutenant, according to your testimony, where we're out of compliance is the fact that we aren't adding country of citizenship, place of birth, and the alien or admission number. Is that where we're technically out of compliance?

JOHN SHELTON: That as well as the day limits, Senator.

SENATOR BOURNE: The three days rather than two?

JOHN SHELTON: Yes, Senator.

SENATOR BOURNE: Okay. Further questions? Seeing none, thank you.

JOHN SHELTON: Thank you, Senator.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 21

LB 1227, 954

SENATOR BOURNE: Other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Cornett waives closing. That will conclude the hearing on Legislative Bill 1227. Senator Jensen is here to open on Legislative Bill 954. As Senator Jensen makes his way forward, can I have a show of hands of those folks here wanting to testify in support of this next bill? I see three. Those in, four, those in opposition? I see three. So the proponents should make their way to the front row and sign in. Senator Jensen, welcome.

LB 954

SENATOR JENSEN: Thank you, Senator Bourne, members of the Judiciary Committee. For the record, my name is Jim Jensen, representing District 20 in Omaha. I'm here to introduce LB 954. LB 954 amends the offense of first-, second-, and third-degree assault on an officer by including employees of the Department of Health and Human Services who provide mental illness or substance abuse treatment. LB 954 also amends the offense of an assault on an officer using a motor vehicle by adding the same class of HHS employees. I am introducing this bill at the request of Bill Gibson, the chief executive officer of Lincoln and Hastings regional center, and also their staff. And certainly, we have had incidents in the past where HHS employees have been attacked at the regional center and there is no apparent penalty for such an attack. However, certainly by my introduction of LB 954, there is some mental health consumers who have voiced legitimate concerns regarding this bill, and I would just ask that you listen carefully to their input and then balance those concerns of the consumers with those of the needs of the regional center staff. With that, I will close. Be glad to answer any questions, and there are those behind me who can explain a little further.

SENATOR BOURNE: Okay. Questions for Senator Jensen?
Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Senator, does this just include the ones who work for the state?

SENATOR JENSEN: Yes.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 22

LB 954

SENATOR Dw. PEDERSEN: Only state employees?

SENATOR JENSEN: Yes.

SENATOR Dw. PEDERSEN: It would not cover people who worked in the facilities like the Douglas County hospital that they have quite a few mental patients there and...

SENATOR JENSEN: No, it would not.

SENATOR Dw. PEDERSEN: Thank you. Would you have any problem if this bill moves that we would amend that in there.

SENATOR JENSEN: Certainly.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you. First proponent.

DON WESELY: Senator Bourne, members of the Judiciary Committee, I'm Don Wesely, and I'm not here representing anybody other than the fact this past year the Health and Human Services Committee had a chance to talk with Senator Jensen about this issue this morning, and we were talking about, you know, has this been a problem over the years? And I can assure that this goes back in time where employees at regional centers have dealt with very difficult individuals. And I don't want to paint a picture of those with mental illness are always dangerous. No, they're not. Most of them, there's no problem whatsoever. But there are some who are a danger, and that's one of the reasons that they're in the environment that they are in those regional centers, to try and protect the public. Those individuals on occasion have attacked staff. The consequences have been very negative in terms of employees. We've lost employees as a result, working in that environment. I don't know if all of you have had a chance to walk through some of the regional centers and some of the units that they have. Most of them, no problem, no difficulty. But there are some units that have extremely difficult individuals who have a tendency toward some physical activity or violence that, it's very scary experience, let me tell you, when I walk

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 23

LB 954

through there, when I sat in the seats you sit in now. And staff that deal with these individuals are doing a real public service, and they ought to have some protection. And this law will provide it for them. And so I'm here in support of Senator Jensen's bill and thanking him for introducing it.

SENATOR BOURNE: Are there questions? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Don, couldn't you see a difference between somebody having a psychotic break and somebody who has just lost their temper and is assaulting?

DON WESELY: That's a good point to make. I mean...

SENATOR Dw. PEDERSEN: Wouldn't that be a difficult to decide, here? I mean, there are people, I've worked in one of these institutions and in corrections for years, and there's a difference between somebody who has had psychotic break and somebody who's just being retaliatory.

DON WESELY: Yeah. And that's a distinction you may want to make, and perhaps that's what Senator Jensen is referring to with some of the opposition testimony you'll be hearing. I think that's a fair question. But I think, at the same time, these employees are in an environment that, again, is a dangerous one on occasion. And something ought to be done to help them.

SENATOR Dw. PEDERSEN: Thank you, Don.

SENATOR BOURNE: Further questions? Seeing none, thank you.

DON WESELY: Thank you.

SENATOR BOURNE: Other testifiers in support?

EDWARD VAREJCKA: My name is Edward E. Varejcka, E-d-w-a-r-d, middle initial E, V-a-r-e-j-c-k-a. I am here today representing the personal opinions of myself and others who signed in support of LB 954. We the undersigned are also employees at the Lincoln Regional Center. We wish to make it clear up front that our support for this bill does not diminish our support for the mentally ill we care

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 24

LB 954

for. Our support for this bill is directed at those individuals who manipulate the justice system with feigned mental illness in order to leave a correctional facility for placement in a mental health facility where their freedom is less restricted. No employee in a mental health facility would hold any individual suffering from mental illness accountable for actions resulting from their mental illness. However, those individuals who do understand the consequences of their actions should be held accountable. People working in mental health settings run the risk on a daily basis of being injured at work due to the nature of the clientele served. Employees in the mental health field have been trained to understand and identify behaviors associated with mental illness. However, there is a small segment of individuals who end up in the mental health facilities who are not suffering from mental illnesses, and who intentionally and deliberately threaten to or attempt to harm staff and others in order to intimidate staff and manipulate their treatment. The very nature of working in a mental health setting includes the potential for personal cost related to these work injuries. Work injuries in mental health facilities may result in personal medical expenses, employee reassignment, resignations, and potentially lifestyle changes that result from a life-altering injury. One employee at the Lincoln Regional Center who worked in the Forensics Unit was injured in December 2002. His neck was injured. His neck injury required four separate surgeries over the next three years. In November 2005, he was also informed that he needed to have rotator cuff repaired related to injuries sustained at work. Due to these injuries he sustained, he cannot engage in previous hobbies such as skeet shooting or hunting. He has experienced disturbances in his sleep pattern. He cannot drive a motor vehicle for extended periods of time. And he cannot play with his kids at home, nor can he attend basketball games that require lengthy watching of basketball running up and down the court. I also included in here a letter from another individual that was hurt. (Exhibit 6) I won't read that on his behalf as I included it in the packets. Again, the intent of LB 954 is not directed at those individuals hospitalized for treatment of their mental illness. The correctional system provides mental health treatment within their facilities. Assaults by inmates against correctional officers are considered felonies. The intent of LB 954 is to level the playing field for employees

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 25

LB 954

in mental health facilities. Every person who works in the mental health field does so because they are dedicated to the work they do. Thank you, and I'm glad to answer any questions you may have.

SENATOR BOURNE: Thank you. Are there questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Sir, thank you for your testimony. You worked at Lincoln Regional Center?

EDWARD VAREJCKA: Yes, I do.

SENATOR FLOOD: This has to be a hard issue for you as a regional center employee because you routinely deal with people, I mean all of your patients are mentally ill. Is that correct?

EDWARD VAREJCKA: They're either mentally ill or they have been sent there for an evaluation to determine their illnesses, yes.

SENATOR FLOOD: So the ones that have been sent there for an evaluation and haven't been diagnosed as possibly mentally ill, this would really apply to them.

EDWARD VAREJCKA: This would apply to those that are there for evaluations or possibly those that have come from the correctional facility that, like I mentioned earlier, that are feigning mental illness.

SENATOR FLOOD: Feigning, what do you...

EDWARD VAREJCKA: Some of our individuals that we treat will turn around and report that they're having hallucinations or a psychotic break, nervous breakdown. They are then transferred from the correctional facility to our facility where we observe them. If the psychiatrist deems them necessary for treatment, they're placed on medications. So there's a various array of individuals that are served within our facility.

SENATOR FLOOD: I support this for someone that's not mentally ill that happens to be in regional center. But if they're under psychiatrist's care and they've been diagnosed

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 26

LB 954

as having an illness severe enough to warrant inpatient treatment, I am a little uncomfortable making this charge a Class II felony punishable up to 50 years in a correctional institution available to a prosecutor that may prosecute someone that is behaving that way because they're mentally ill. Is there a way to differentiate between the two. I mean, is there a way to be very clear about how this would apply to a regional center patient?

EDWARD VAREJCKA: I think some safeguards need to be put in place in conjunction with this bill. Currently, our protocol is is that anybody that acts out violently that requires any kind of restraint or seclusion is evaluated by an advance practice nurse practitioner or a psychiatrist within one hour of their actions. So, therefore, working in conjunction with the attorneys, that determination could be made at that time if they were fully aware of their actions at the time that they committed them.

SENATOR FLOOD: And I guess we start putting this language in the statute, we have the question as to whether or not the psychiatrist that makes that evaluation or performs that exam is a third party to protect, I mean, we're talking about 50 years in prison with a Class II felony. And we're talking about somebody that's in a mental institution. I see where you're going with this, and I am supportive of the concept to getting us there, but I think have so many hurdles before we can just make this charge available in the statute. Do you see where I'm coming from?

EDWARD VAREJCKA: Yes, I do.

SENATOR FLOOD: At the risk of incarcerating somebody that's mentally ill with up to 50 years in prison. But that doesn't mean that it's not possible. I'd like to talk to you more about it, though, because I think it's important. Thank you.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: You include the word recklessly along with intentionally or knowingly. Why do you put recklessly in there?

EDWARD VAREJCKA: I guess some of the actions that I have

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 27

LB 954

seen where, I'll give an example of one of the individuals that we didn't feel his actions were a result of his mental illness. He went back, fashioned weapons. He may not have intentionally meant to hurt one of the staff members, but they ended up having part of their ear cut where it required it being reattached. That was a reckless act on his part, throwing the shards of glass at him, but his whole intent originally was to injure some of that staff that worked the unit, not the individuals that responded in assistance.

SENATOR CHAMBERS: Now, these people who have charge of mentally ill individuals have on occasion been prosecuted for abusing them physically, sexually, psychologically, withholding medication, and turning it to their own use. So would you be in favor of applying the same penalty to one of these staff members who intentionally, knowingly, or recklessly harms one of these patients?

EDWARD VAREJCKA: Yes, I would.

SENATOR CHAMBERS: So that they would face a Class II felony?

EDWARD VAREJCKA: Yes, I would.

SENATOR CHAMBERS: And what would be the basis for that conclusion on your part?

EDWARD VAREJCKA: When we accept employment in the mental health field, we're there to protect, provide an environment that's safe for those individuals. That's made clear upon your hiring within, especially within the HHSS system. And if you're going to voluntarily do any of those things, then you should be prosecuted and held accountable for your actions.

SENATOR CHAMBERS: Do you know that there are occasionally people committed to a mental institution who have been charged with a crime, but they were found to be not responsible by reason of their mental deficiency, whatever it may have been?

EDWARD VAREJCKA: Yes, I am.

SENATOR CHAMBERS: Suppose one of those...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 28

LB 954

EDWARD VAREJCKA: I work with those individuals on a daily basis.

SENATOR CHAMBERS: Well now, if that person cannot be held accountable for his or her offense and is there for that reason, how can we say if that person does one of these things, he or she now is guilty of a Class II felony? That doesn't make sense, does it?

EDWARD VAREJCKA: No, it doesn't make sense, and I don't think that was the intent of the bill, to direct it at anybody that's suffering from mental illness.

SENATOR CHAMBERS: Does it say that in the bill? Does it make any distinction?

EDWARD VAREJCKA: I'm not specific on the wording. No, I'm not.

SENATOR CHAMBERS: Okay. But you understand, I'm going to tailgate on Senator Flood's question. You do see what it is that I'm trying to get at with the question that I'm putting to you?

EDWARD VAREJCKA: Yes, I do.

SENATOR CHAMBERS: Okay. Thank you. That's all I would have.

SENATOR BOURNE: Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you.

SENATOR BOURNE: Other questions? Thank you. Next proponent.

TOM WEBER: Good afternoon, Senator, committee. My name is Tom Weber, W-e-b-e-r. I am the above-mentioned staff member that was injured at the Lincoln Regional Center at forensics. I am here today to answer any questions and give testimonial of patients that do malingering, patients answering some of Mr. Chambers' question, of patients that are there under the mental health court board commitment and also there found NRRI, not responsible reason insanity. These

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 29

LB 954

same patients that, when they are taking their medications, are doing fine. And they understand the difference between right and wrong. If they were evaluated by the psychologist, they would say, they have written reports that we staff members evaluate on a daily basis and send on to the psychiatrists. They, when taking medication, they also can determine whether or not they want to manipulate the system to regain certain privileges. And separate staff, they are knowing, what sir?

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: When you mention a psychiatrist who would evaluate this person, is this a psychiatrist who treats these people, provides treatment for these people?

TOM WEBER: Yes, sir.

SENATOR CHAMBERS: And then he's going to turn around and be the one who would participate in the prosecution of his patients? Does that...it doesn't make sense to me. If the psychiatrist is there to treat these people and yet he is going to be the one to help lay out a criminal case, there is such a conflict there that it rises to level in my mind of being unethical. And if I saw a psychiatrist doing that, I'd try to have him removed.

TOM WEBER: To answer that question, this psychiatrist would also be in favor, they're the one that gives recommendations to the mental health board on their release or benefits that they might gain.

SENATOR CHAMBERS: That's not in a criminal proceeding, though. We're talking about a crime here, establishing the basis for charging somebody with a crime.

TOM WEBER: And we are talking also about patients that show that they can take care of themselves on a daily basis, such as grooming and hygiene, can follow the rules, and with one instant, they want to regain more freedoms and more benefits, and then the next minute, try to manipulate...

SENATOR CHAMBERS: Do you think a mouse has the mentality of a human being?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 30

LB 954

TOM WEBER: Excuse me?

SENATOR CHAMBERS: A mouse. Does a mouse have the mentality of a human being?

TOM WEBER: No, it does not.

SENATOR CHAMBERS: Are you aware that there are mice and other little critters which will pretend that they're trapped in order to try to elude a human being? And when a human being makes a move here, the mouse scurries over there. But it doesn't take mentality of a sane human being to figure out something like that. That's a survival skill. But here's what I'm trying to focus on with you, and you're not being asked by me to be accountable for a psychiatrist. I just want to be sure of what you all are taking about who say that there's going to be an evaluation by a psychiatrist. This psychiatrist knows that he or she is providing information that could lead to the prosecution of one his or her patients. Now there are doctors who will not participate in judicial executions. It violates their ethics. But you don't see, and people who work in the capacity that you do, a conflict where a psychiatrist is going to help make a criminal case against one of his or her patients? You don't see a conflict there? The psychiatrist works for the state. The employee who is going to be lodging the criminal charge works for the state. The person being accused is in the custody of the state because he or she is not mentally capable of living other than in that environment. With all of these forces of the state against that person, you feel that the psychiatrist ought to also throw his or her lot in with the state in putting together a basis for criminal prosecution of the psychiatrist's patient? That doesn't, if it doesn't raise any questions in your mind, I don't want to say it does just because I'm asking you. I'm asking to find out whether it does. Does that raise any questions in your mind?

TOM WEBER: Yes, sir. But in the same breath, it does not necessarily mean that it has to be their treating physician that does the evaluation on this violent act.

SENATOR CHAMBERS: Would it be a state employed psychiatrist?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 31

LB 954

TOM WEBER: Say again.

SENATOR CHAMBERS: Would it be a psychiatrist in the employ of the state?

TOM WEBER: Yes, sir.

SENATOR CHAMBERS: It would be? You said yes?

TOM WEBER: Or it wouldn't necessarily, it could be in the private sector that could also come in and do the evaluation.

SENATOR CHAMBERS: And they would become, then, a part of law enforcement rather than healers, right?

TOM WEBER: I think that that's twisting it a little.

SENATOR CHAMBERS: You think I'm twisting?

TOM WEBER: I believe that a lot of these patients that are in there do know the difference between right and wrong once they are stabilized on medication, and that...

SENATOR CHAMBERS: Are you a psychiatrist?

TOM WEBER: No, sir.

SENATOR CHAMBERS: On what do you base your opinion on?

TOM WEBER: On...

SENATOR CHAMBERS: You've heard psychiatrists say that?

TOM WEBER: Yes, I have.

SENATOR CHAMBERS: And you, then, are aware of patients that the psychiatrists have identified and told you that these are manipulative people. They really know what they're doing. They're working the system. The psychiatrist will point out people like that so you will know better how to deal with them. Is that true or false?

TOM WEBER: There is times that we are privileged to information on different acts and at different levels.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 32

LB 954

SENATOR CHAMBERS: The psychiatrist gives you that information?

TOM WEBER: That, and...

SENATOR CHAMBERS: Is that what you're telling me?

TOM WEBER: ...that and our determination from our observations.

SENATOR CHAMBERS: But you're not a psychiatrist.

TOM WEBER: No, sir.

SENATOR CHAMBERS: Is there such a thing in these regional centers as doctor patient confidentiality?

TOM WEBER: Yes, there is.

SENATOR CHAMBERS: Does it apply when an employee wants to know something about the patient which would be considered confidential if somebody just off the street wanted to know?

TOM WEBER: Depending on which ward and depending on safety procedures, we are privileged to that information.

SENATOR CHAMBERS: Because of, the point that I'm trying to get at, I think I've gone far enough, so I don't have any more questions of you, and thank you.

SENATOR BOURNE: Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Thank you for testifying, and thank you for what you do out there. I guess one of the questions I have, and it's important to remember, Lincoln Regional Center has a different role than any other state facility because it's forensic in nature. Can you talk about that for a moment because I know that you don't just have people that are adjudicated by a mental health board to be mentally ill. You do have a relationship with the Department of Corrections, is that correct?

TOM WEBER: Correct. Our specific ward, which is S-5 in the forensic building, handle the patients that come in for a

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 33

LB 954

competency evaluation. It determines whether or not they were competent at the time of their crime to stand trial. We do have patients that after that competency evaluation is done return to the correction facility and, depending on how their court appearance went and their competency evaluation went, they may come back to us and we might have to restore competency.

SENATOR FLOOD: And I guess the reason I ask that is, and I, even when I talked to your coworker before, I forget, and I think maybe a lot of people forget, these aren't mental health committed patients that we're talking about here. These are inmates in the Department of Corrections that are coming over for whatever reason related to a mental health concern, maybe or maybe not, I don't know. So at the time that you get them initially, you're dealing with a DCS inmate rather than an HHS commitment. Is that correct?

TOM WEBER: Yes, sir. There are two types of clients that are there.

SENATOR FLOOD: And your support for this bill is, as I understand it, you look at the corrections system and say, well, it's an offense across the street. But the minute they cross the line over here, there's no protection criminally. There's no criminal liability for the same act. Is that true?

TOM WEBER: That is true, and in my case, the manner in which I was injured restraining a patient, he was determined competent but was also a mental health board committed. A year from when I was injured, he was released to the street with no repercussion for the injuries that I sustained.

SENATOR FLOOD: Thank you very much.

SENATOR BOURNE: Further questions? Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. What is your percentage, can you give just a guess of what the percentage is of people that you're getting over there for evaluation from the Department of Corrections?

TOM WEBER: I do not have those percentages in front of me. But on...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 34

LB 954

SENATOR DW. PEDERSEN: How many do you think you have on an on-going basis? Five or six?

TOM WEBER: Our ward, holding 18 to 19 patients, I would say that usually it's anywhere from 50 to 55 percent on...

SENATOR DW. PEDERSEN: Most of your ward is from corrections, then?

TOM WEBER: Yes, sir.

SENATOR DW. PEDERSEN: Bigger percentage of them. Who sent them over from corrections? Were they sent over from a mental health department, or was it just sent over by the case worker or unit managers or?

TOM WEBER: We have had a number of patients from numerous correction facilities, whether it be county or state and depending on the crime or the fashion in which it was committed.

SENATOR DW. PEDERSEN: Thank you.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: Am I to understand you to say that the people are being sent to this mental institution who have no mental problem?

TOM WEBER: That was something that they decided or their lawyers decided to have an evaluation done so that they could use that at court.

SENATOR CHAMBERS: The person who injured you, because I wasn't here, I just got a brief smattering from what you said a minute ago, was not there for an evaluation. I thought, I'll let you tell me. What was that person's situation?

TOM WEBER: He had a mental health board commitment. Also, he was there for, and a medical, or a psychiatric evaluation. He was, well, I'm not sure how much I can say, but...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 35

LB 954

SENATOR CHAMBERS: Well, I don't need you to go into anything that might be confidential. But what I'm trying to get at, if you say this person was there under a mental health board commitment, does that mean he had a serious mental problem?

TOM WEBER: Not necessarily. Mental health board commitment is determined on their length of their stay at one of these facilities. They have the right to say whether or not the charges, they will be dropped, or because it would be so hard to prove that they were...

SENATOR CHAMBERS: Were legally responsible for what they did, right?

TOM WEBER: Exactly.

SENATOR CHAMBERS: Okay. So we have somebody who's not legally responsible for what he or she did, because I'm moving on to something else. Then you said you were injured trying to restrain this person.

TOM WEBER: Yes, sir.

SENATOR CHAMBERS: And how were you trying to restrain the person? What were you doing?

TOM WEBER: We received a court order to medicate. I was told that, first of all, we always try to get the patients to comply with rules. They are sent down...

SENATOR CHAMBERS: Well, if his condition wasn't really that bad, why are you medicating him? Do they medicate people out there just to make them docile? Or do they have a condition that requires medicating?

TOM WEBER: No, but when a patient becomes threatening verbally and has the physical stature to implement what he says he will do, it is a safety procedure that we must go through to protect our staff members.

SENATOR CHAMBERS: So then if somebody is using abusive or threatening language and is a big guy, then you medicate him. Is that what your practice is?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 36

LB 954

TOM WEBER: Not necessarily. We will suggest compliance and also giving them the opportunity to calm down in their room. And if they choose to escalate, then we have no other choice.

SENATOR CHAMBERS: By escalate, what do you mean?

TOM WEBER: Become...

SENATOR CHAMBERS: Because he's in his room. He can't get to you unless you come in there with him, so how does he escalate in his room? He talks louder? Is that...

TOM WEBER: Louder, or more threatening or tries to rip his bed frame apart or his bookshelf, or fashion weapons.

SENATOR CHAMBERS: Suppose he's not trying to rip the bed frame or the bookshelf, but is talking louder and using more threats. At first he said, I'll smash your nose. Then he said, I will pull your eyeballs out. I will snatch the ears off your head. I'll chew you up and spit you out. Is that considered an escalation?

TOM WEBER: Yes.

SENATOR CHAMBERS: And then you go in there with enough people to control him and medicate him?

TOM WEBER: First we would try, again, to comply...

SENATOR CHAMBERS: And he said, no, stay away from me. It's clear that he's not going to just let you medicate him. That's when you come in to subdue him by force. Is that correct?

TOM WEBER: Yes, sir.

SENATOR CHAMBERS: How many of you were there to subdue him?

TOM WEBER: We have a presentation of numbers in which trying to get them to comply with...

SENATOR CHAMBERS: How many of you were there in this incident?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 37

LB 954

TOM WEBER: In this incident, probably 20.

SENATOR CHAMBERS: Twenty of you to subdue him?

TOM WEBER: Yes, sir. It's a presentation of numbers to get them to comply. And a...

SENATOR CHAMBERS: And you got hurt.

TOM WEBER: Yes, sir.

SENATOR CHAMBERS: Who hurt you?

TOM WEBER: The patient.

SENATOR CHAMBERS: And the ones who say that the patients hurt you are the ones who are on your side, right?

TOM WEBER: And myself.

SENATOR CHAMBERS: Okay. So 20 against one, physically, and then 20 testifiers against one. How do we know you didn't get hurt by some of the people who were there with you? That many people could get in each others way, couldn't they?

TOM WEBER: Yes, they could very easily get in the way.

SENATOR CHAMBERS: Who settled on the idea...

TOM WEBER: We, not all 20 people go into the room. It's a, like I had mentioned before, it's a presentation of numbers to try and get...

SENATOR CHAMBERS: Well, how many went in the room. That's what I'm trying to find out.

TOM WEBER: I would say five to six.

SENATOR CHAMBERS: Five to six men went in a room. Were they all at least as big as you are.

TOM WEBER: Some smaller.

SENATOR CHAMBERS: How much smaller?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 38

LB 954

TOM WEBER: 140, 150 pounds.

SENATOR CHAMBERS: But you had others who were bigger than 140 and 150 pounds among that 20, didn't you?

TOM WEBER: Yes, sir.

SENATOR CHAMBERS: So why did you sent little guys in there instead of big ones when you're afraid of this man physically? Does that make sense to you? You're trying to use overwhelming force. You said you want the presentation of these numbers. It seems to me that you would want this person to see that there is overwhelming force because they're big people, but you all choose for whatever reason to send little guys in there, too. So there were five guys, some of them little, and what did you do that at the time you got hurt? What were you doing?

TOM WEBER: I was trying to subdue the patient.

SENATOR CHAMBERS: And what were you doing? Did you wrap your arms around him?

TOM WEBER: I tried gaining control of the arms to restrain the patient and walk him down to the floor.

SENATOR CHAMBERS: And what were the others doing? Watching?

TOM WEBER: No. They were also trying to, we have a protocol in how we handle situations such as this.

SENATOR CHAMBERS: Then I want you tell me how not to say the word protocol. I want to hear how these injuries occur since you want people to run the risk of spending 50 years in prison.

TOM WEBER: The best way to understand this is, in these situations, when they get to this level,...

SENATOR CHAMBERS: Just tell me what you did.

TOM WEBER: It's like a street fight starting out...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 39

LB 954

SENATOR CHAMBERS: Okay. So...

TOM WEBER: ...trying to gain control.

SENATOR CHAMBERS: So five or six of you rushed, gave him the bum's rush or the bulls rush and just started grabbing him where you could.

TOM WEBER: Yes, sir.

SENATOR CHAMBERS: So there was really chaos, confusion, and no real organized plan.

TOM WEBER: There is an organized fashion as far as whether you go right, left, whether, we are predetermined whether or not we're going for which arm and which leg and...

SENATOR CHAMBERS: So you were told to do what?

TOM WEBER: I was told to restrain the patient's arms.

SENATOR CHAMBERS: And when you grabbed, did you ever grab the arm.

TOM WEBER: Yes, I did.

SENATOR CHAMBERS: And what happened to you.

TOM WEBER: He pushed off the wall, lunging forward. I was forced to sit on a bed frame that was bolted to the floor. The patient then came over the top of me, putting weight on the back of my head, putting my chin down to my chest, shutting off my airway. I was...

SENATOR CHAMBERS: But you were just under his weight. These five or six other guys were all on this pile, too, weren't they?

TOM WEBER: Not on top of him. They were on the sides. But being a 200-plus pound patient, I was forced to throw my weight to the side to regain my airway, in which I injured my neck.

SENATOR CHAMBERS: And he should go to jail for 50 years for that?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 40

LB 954

TOM WEBER: No, sir. Not every situation is calling for this. It is not every situation is like the situation in which I was injured, but there are a lot of situations there...

SENATOR CHAMBERS: Well why would then send somebody...

TOM WEBER: Each situation will have its own characteristics.

SENATOR CHAMBERS: Okay, but why would they send somebody to illustrate the need for this bill who was involved in a situation to which the bill would not apply?

TOM WEBER: Because I've been in hundreds of these situations in which this was not just the only situation that I was ever injured at. I was punched in the mouth. I've been bitten. I've had eye...

SENATOR CHAMBERS: And you've punched patients back, haven't you?

TOM WEBER: Not once.

SENATOR CHAMBERS: And if you did, you'd be fired, right.

TOM WEBER: Yes, sir.

SENATOR CHAMBERS: So you wouldn't admit it if it were true, would you?

TOM WEBER: Yes, I would.

SENATOR CHAMBERS: Okay. That's all I have. Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you. Other proponents? Is the last proponent? If the opponents would start making their way to the front row and sign in. Welcome.

JAMES PETERSEN: My name is James Petersen, J-a-m-e-s P-e-t-e-r-s-e-n. I'm a 25-year employee of the forensics unit at the Lincoln Regional Center, and the reason I've come is to address some of, basically some of the concerns

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 41

LB 954

that Senator Chambers was just asking about, how would this be applied to the patients that are in there and make sure that it isn't misused from its intent. We have a variety of patients in the forensics unit, some of them that are there for evaluation to determine whether or not they ought to be sent back to court and face charges, some of them who are there by virtue of having already been to court and had been determined to be mentally ill and dangerous to themselves or others and require incarceration in this particular facility as opposed to any other mental hospital within the state of Nebraska. The forensic unit is a little bit different. The concerns that have been expressed about not wanting to see this bill visited upon people who are undeserving of it are completely understood by myself, and I think pretty much everyone else who signed those petitions. We do care about our patients. We do not want to see them dealt with in an undue fashion that would consequent them beyond what they as a mental patient should be dealt with. The people who I'm concerned about are the individuals who have evidenced their very willingness to sit down and engage in a premeditated fashioning of weapons with the specific intention of using them against whoever they're going to encounter, which is going to be myself as a direct care staff, Tom, Ed, all the rest of us that have worked out there. In no way do I want to say that I think somebody who is experiencing some legitimate mental issues and is, somebody earlier something about experiencing a loss of control or that they're angry at the moment. That's not who this bill is geared towards. We're talking about the individuals who have gone in there and said, I'm going to take this object here and fashion it into a weapon and then I'm going to behave in such a fashion that I know the staff that works here is going to have to come and deal with me, and when they do, I'm going to hurt one of them. That's his plan up front, ahead of time, is to do that. And they do it. As an illustration of this fact, a couple of years ago, I had to respond to an SPE, which is a security psychiatric emergency, which means there's an on-going fight going on, which they need everybody available in the building to respond immediately. I responded to the SPE and I was the first one to go up through the door onto the maximum security ward, and there was a patient, a large man, standing there with a padlock tied through the toe of a sock and he was using it to beat on another staff member. As I entered the room, he now realized he had two people to deal with instead of one, and he turned his back and started

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 42

LB 954

walking, backing himself against the wall. Having seen him before engage in karate practice moves and stuff out in the day hall, I knew that this guy had some exposure to martial arts. And I also know that one thing that somebody who engages in martial arts needs is a little bit of open room to work with. So as he was moving toward the wall, I thought this is exactly what we need, for him to not be out in the open where he can move around. As he approached the wall and the guy who was being beaten with the padlock before and myself approached him and got up to where he was against the wall, he swung it in an overhead fashion. I grabbed a chair cushion to catch the padlock in anticipation of him swinging it at me, and caught it and it bounced back up. And when it bounced up, then we rushed him to put him up against the wall while we were going to wait for additional staff to get there and assist us in regaining control of him. When the padlock hit the chair cushion, it bounced straight up in the air, and I was rushing to get him, he snapped it down and hit it into my forehead with enough force to break the padlock and imbed the numbers into my skin, which my coworkers jokingly told me I should quit moving around because they thought they could open my head because the numbers were in there. In the aftermath of this, both of us were sent to the emergency room. I had x-rays taken of my head. State Patrol investigator came up, took pictures of it, took statements of it, and nothing ever came of it because the idea was, well, this guy is already in the mental hospital, so what are we going to do? Well, he's out now. He was released here just recently. And it's not part of his record, wherever he was released to, that this incident took place and that it resulted in, well, it's part of it that the incident took place is in his chart. But there are no legal consequences for it. So, this is a situation where we're talking about a guy who didn't just spontaneously erupt into some combative situation. He had planned this out in advance. He waited until the population on the ward was taken off the ward, thereby reducing the number of staff present on the ward. And he basically, he planned the whole thing out. He knew when the time to do it would be, based on the number of personnel on the ward to respond to him, and he had previously fashioned a weapon with which to act out this attack, and he used it.

SENATOR BOURNE: Let's see if there's questions, Mr. Petersen. Are there questions? Senator Chambers.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 43

LB 954

SENATOR CHAMBERS: Why do they allow these people to have access to implements, material, or objects which can be fashioned into weapons?

JAMES PETERSEN: Part of the rights that they have as a patient is to have some degree of privacy. So we afford them all a locker with a padlock on it, which they have the option of retaining, based on their behavior. In the event that they are not behaving appropriately, then we take those away from them. The idea of passing out padlocks, I would agree, I have often thought, why are we handing these out? I don't know why we have pool tables in the security unit, either, where we hand them pool cues.

SENATOR CHAMBERS: Well, here's what I'm ultimately going to get to, and I'll just get to it right away. If it's clear to people who are professionals or paraprofessionals that implements are being used as weapons, and I'm going to accept at face value what you said about these people premeditatedly laying out a scheme and then carrying it out, it seems to me that somebody is stupid to walk right into it. If I know that you're going to do something bad to me and you're hiding behind that pillar, and I stick my head around the pillar, and you go up side my head with a baseball bat, then instead of saying, I ought to use some judgment, I say, well, I want you to give him 50 years in jail, and they'll say some things you can prevent yourself. So when we have these institutions and they have people, some of whom have been declared dangerous to themselves or others, what sense does it make to leave readily accessible to them implements which can be used to harm people? Who makes the decisions as to what types of implements, objects, and what not these individuals will have access to?

JAMES PETERSEN: This is kind of a different fish to fry, Senator. And I agree with completely with you about a lot of what your premise is.

SENATOR CHAMBERS: Well, couldn't we do some of that first, because prevention is better than cure. I'd rather you not have a good doctor who can deal with you getting hit with a padlock. I'd rather have somebody say the padlock is not going to be available in the first place.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 44

LB 954

JAMES PETERSEN: The thing that we've run into in the time that I've been out there is a conflict between wanting to provide a therapeutic and nurturing environment that affords a patient some sort of an existence on a daily basis besides living in a very austere, four block wall kind of life. So that's why we have things like a pool table so that they can go shoot some pool. From a security standpoint, it makes no sense to have a pool table with pool balls and pool cues. But from a therapeutic sense, we want to afford them to do something of a recreational nature, and so that was one of, we also let them lift weights. Quite frankly, I have questioned for a long time the appropriateness of having someone who's been committed to the forensics unit be allowed to lift weights and become a bigger, bulkier, stronger individual after being there for five years than he was the day he walked in. So I would agree with that. And I personally am the individual that brought to question the idea of the garden group, which again was seen as an activity we wanted to provide them to allow them some normal pursuits of leisure activities and all that. Sounds fine on the surface. We would hand them a garden trident to go out and turn the soil with. And I brought up to the attention of some people, I said, you know, that's not a lot different from what they used to give the gladiators to fight to death with in the arena. And I'm handing it to this guy. Well, fortunately, somewhere along the line, someone said, that's probably right. Okay, we won't do that any more. We also don't have garden group any more.

SENATOR CHAMBERS: And I'm not saying that they should live within four walls with no accoutrements of civilization. But before I would agree to a bill such as this becoming law, I would want to be sure that those who are dealing with these inmates or patients or patient-inmates are doing all they can to ensure a secure environment. And I don't mean, I think you know I don't mean handcuffing people and chaining them all day long. I'm not talking about that. But some of the things like the padlocks, which are not essential that the person had, and that's all the questioning I'll do because there's a point that I'm getting to that maybe got across to you and maybe it didn't, but I'm not going to, you know, just keep asking questions. Thank you.

JAMES PETERSEN: There's something, another incident that I

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 45

LB 954

guess I would illustrate the fashioning, the premeditated fashioning of weapons from objects that were not in the category that you're addressing, which I agree with you about. We had an incident that took place just prior to Christmas of 2004 of an individual who had very cleverly taken note of how he could arrange his bedroom furniture in such a fashion as to, the door is on the rooms in the forensics unit swing both ways. So that if somebody tries to barricade themselves in the room, we can just swing the door out and defeat the barricade. This guy said, okay, I can't stop you from doing that. But I can set up my room furniture in such a fashion that I'm going to leave a hole about two-foot by three-foot wide, and one of you at a time can come through. And the first one or two that come through, I'm going to be able to hurt them before enough of you get in here to get me and finally overpower me. That's what he set up. And for his weapons, he had taken out some pieces of angled channel iron that go around the windows. This building was built in the 50s. One of the things that has been made mention of repeatedly through the years is a need to modernize the building with various different things, part of which would be the windows. And this illustrates this immensely. I don't now how he got them off, but he did, and he had two pieces of steel angle iron that were roughly three foot long each, and he had taken them and sharpened them on the grout in between the blocks, the wall panels. He had also put on his winter coat and gloves and smeared Vaseline all over the arms and the chest of it so that when we came in to deal with him, we would not be able to get a good grip on him. And he had two pieces of angle iron, and then fashioned his room furniture in such a way that it was like, yeah, you're going to come in, one at a time, and I'm going to use these two pieces of weapon I have that every room has got them, and no, they're not supposed to have them.

SENATOR CHAMBERS: Did you go in one at a time?

JAMES PETERSEN: No. Actually, we determined that he had played his situation pretty well and that he was, in fact, going to hurt at least one or two of us pretty good before we could get enough people in there to deal with him. So we called the State Patrol for the first and only time since I've worked there. Every other time, we go in and we deal with it. We get a mattress out of a room. Recently, they

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 46

LB 954

gave us one of these shields that you can use now. We haven't had that but for like the last couple of years. But we deal with it ourselves, and some of us get hurt dealing with it, but we deal with it. This time, we determined that we can't do this without there is going to be some of us get hurt, and badly, because this guy is talking about wanting to kill us, not just hurt, not hit you. And he had the weapons with which to do it, and he had set the situation up to where he was in control of how this was going happen. And again, I think this is a good illustration of the mentality of some of our patients. When it was we technicians, we front line care staff, that he was dealing with, it was, come on in. I'll kill you.

SENATOR BOURNE: Further, are there further questions?
Senator Friend.

SENATOR FRIEND: Yeah, thanks, Chairman Bourne. Quickly, sir, can you tell, were any of the, in the two circumstances that you mentioned, were there any charges brought against either of those gentlemen?

JAMES PETERSEN: No, sir. I don't believe either one of them had charges brought against them for it. No. As soon as the guy I was just telling you about, when he, we called the State Patrol.

SENATOR FRIEND: So...

JAMES PETERSEN: When they showed up, he threw out his weapons and was totally compliant then.

SENATOR FRIEND: But, so I get, just so we, just so we're clear and we understand, the man hit you in the head and dented your head, there were no, this guy, what happened to him immediately after that?

JAMES PETERSEN: The rationale was that he was already a patient in the maximum security unit of the mental hospital system, and therefore prosecuting him would be rather pointless waste of monetary resources to do so because his defense would be like, I'm a patient in a maximum security mental hospital. How can you hold me responsible for this? And therefore, they thought, well, then, we're not even going to bother to do it. And they didn't pursue it.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 47

LB 954

SENATOR FRIEND: Okay. Thanks.

SENATOR BOURNE: Further questions? Senator Aguilar.

SENATOR AGUILAR: Just a comment. Thank you for your service. It sounds like you have a very difficult job.

JAMES PETERSEN: Yes, sir.

SENATOR BOURNE: Further questions? Seeing none, thank you. Are there other proponents? No other proponents? Would the first opponent make their way forward? Welcome.

KATHY HOELL: (Exhibit 8) Hello. First of all, I have got some written testimony from another person who couldn't be here, and I told her I'd hand it out for her.

SENATOR BOURNE: Okay. We'll make that part of the record. Could you state and spell your name for us?

KATHY HOELL: Yes. My name is Kathy Hoell, K-a-t-h-y H-o-e-l-l. Just for identification purposes, I do work for the Statewide Independent Living Council, but I am here as an individual for this hearing. I bring, I was a registered nurse in psychiatric facilities, both state and private, and as the previous testifiers have stated, these people will probably not, they came from the criminal justice system. Whether or not they had a mental illness was questionable. So I see this more as a systemic problem. They need to fix the problem. They don't need to criminalize behavior of people who are truly mentally ill. If that's not the problem, maybe the staff needs to have more training on how to handle some of the issues Senator Chambers brought up on how they handle they handle potentially combative situations. I mean, they don't have to become combative. I've worked on floors in state hospitals that were locked men's floors, so I know what I'm talking about. They don't have to escalate to that level. And sometimes the staff is part of the problem. They're the ones that help to escalate the whole situation. Thank you very much. If you have any questions, I'll be glad to answer them.

SENATOR BOURNE: Thank you. Are there questions for Ms. Hoell? Seeing none, thank you. Appreciate your

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 48

LB 954

testimony. Next opponent.

BRAD MEURRENS: (Exhibits 9, 10, 11, 12) Good afternoon, Senator Bourne, members of the Judiciary Committee. For the record, my name is Brad Meurrens, M-e-u-r-r-e-n-s, and I am the public policy specialist for Nebraska Advocacy Services, Incorporated, the Center for Disability Rights Law and Advocacy. We are opposed to LB 954 on both philosophical and practical grounds. It is not our intent to deny that injuries can and do happen to departmental staff or to trivialize these injuries. However, we believe that LB 954's prescription to prosecute persons with mental illnesses for assaulting departmental employees providing treatment is a misguided approach that does not address the root causes of such behavior and poses significant disadvantages to an already vulnerable population. Instead of adopting a heavy handed punitive and criminal approach to stem instances of physical confrontation between treatment staff and the people receiving treatment, we should examine the underlying causes in context of assaults on staff. We should examine the appropriateness of placements. Claims have been made indicating that individuals for whom LB 954's heightened punishment is needed have been inappropriately placed in such facilities. However, LB 954 as drafted does not offer a solution to practice of inappropriate placement of individuals. On the other hand, if the placement is appropriate, we need to ask whether those incidents forming the impetus for LB 954 arise as a result of fundamental organizational leadership problems, deficiencies in treatment, or inadequate staff training about how to respond to such incidents. Assaultive behavior can be attributed to failures on the part of facilities to provide sufficient de-escalation techniques or trauma informed care training to staff or from the use of restraints. These situations are more along the lines of treatment failure. Unfortunately, LB 954 does not address these underlying causalities, either. While LB 954 might boost staff morale, empowerment, and control over an environment which staff perceives as out of control, these are strong indications of systemic and facility failures, which the department and Legislature should investigate, not problems inherent in individuals with mental illness or severe emotional conditions. A criminal conviction or arrest record could jeopardize an individual's opportunity to access community placement services and future supports. Persons with psychiatric

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 49

LB 954

disabilities already face significant barriers to gainful employment and housing. As the number of housing community placement decisions and employment positions requiring criminal background checks grows, individuals will find it even more difficult to obtain employment with an arrest or criminal record. The National Disability Rights Network, which is the national association for organizations such as ours, has researched this issue and has developed recommendations for alternative approaches. And that is included with my written testimony this afternoon. In closing, we urge indefinite postponement of LB 954 and the Department find a more appropriate way to address this issue. We would be happy to work with the department and the Legislature to develop an effective alternative approach to this issue. I'd be happy to answer any questions that this committee may have.

SENATOR BOURNE: Are there questions for Mr. Meurrens? Mr. Meurrens, have you ever worked in one of these regional centers?

BRAD MEURRENS: No, sir. I have not.

SENATOR BOURNE: Further questions? Seeing none, thank you. Next opponent. Welcome.

MARK YOAKUM: Good morning, Senator Bourne, or afternoon, and Senators. Mark Yoakum, Y-o-a-k-u-m. I've been a former patient at the regional centers, and I do, the staff does need protecting, but we don't need penalties if somebody is not cooperating or something. I've seen restraints put on people for no legitimate reason just because the staff was antagonizing the people to get them upset instead of letting them alone, let them cool down. It's just as easy, oh, let's put somebody in restraints. We haven't done nothing in a while. You know, this should not be a felony if it is brought about a law. But it shouldn't even be the law. And it's not fair at all, you know, to have somebody that doesn't require training to get a job at the regional center. They'll enforce a felony against somebody. And you read in the paper, no job experience required. It's pretty scary when you read that part of it, and then you throw this in on it. And I've been medicated just because I'm a big guy, for no reason. So it does happen.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 50

LB 954

SENATOR BOURNE: Thank you. Are there questions for Mr. Yoakum? Seeing none, thank you. Appreciate your testimony. Next opponent. If there are other opponents, if you'd make your way forward to the on-deck area. Welcome.

J. ROCK JOHNSON: Welcome. My name is J. Rock Johnson, initial J, Rock, R-o-c-k J-o-h-n-s-o-n. I was graduated from DePaul College of Law and practiced law in a couple of states. I've also been in the public system in a couple of states. And I've toured the Lancaster County jail. I've not ever been within a correctional facility setting based on my own behavior. I work with, and have for some time, people whose goal is to eliminate the use of restraints, seclusion, and I'd like to tell you that there's a facility in Alabama named Taylor Hardin, which is a similar facility to ours that when it received its award from the National Alliance for the Mentally Ill in 2004, it had not had any incidents of restraint in over two years. People are coming from around the country and from around the world to Taylor Hardin. It seems very clear to me that there's a need for training. And also, as I've listened, training around the understanding of what mental illness is, that it's not merely the legal standard of right or wrong, but the ways that mental illnesses manifest themselves. And if I heard correctly, the problems identified as people who are feigning mental illness, then my question becomes, where are the psychiatrist, psychologists who are perhaps advising judges? If the staff is able to identify people who are feigning, then one would think that professional staff would be able to do so as well. So I just have to raise that question. And there is also, because there can be prosecutions and felonies in correctional facilities that have treatments, therefore there should be correctional prosecutions in treatment facilities simply does not follow. I very much appreciate the comments that have been made regarding what happens to the individuals who, as we have heard often, are victims of a great deal of violence. There is people who may suffer lifetime trauma. We're learning more about trauma and its effects. We also have some concerns here, and I think that some of the information that Nebraska Advocacy Services distributed, having to do with the constitutionality, having to do with licensing and the ethical issues, the Health Information Patient Protection Act, or HIPAA, and the consequences of any kind of criminal prosecution on an individual's life. I also, and I do not

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 51

LB 954

have the facts of this, and so perhaps I should raise it, but I've been given to understand that the correctional facility, forensic building, is not accredited. And I don't know what accredited applies to that, but I think that's something that should be looked at, and I would definitely support the idea of further investigation into this issue, particularly inviting all the senators to visit the forensic facility. Thank you.

SENATOR BOURNE: Thank you. Are there questions for, is it Rock Johnson? Ms. Rock Johnson?

J. ROCK JOHNSON: Yes. J. Rock.

SENATOR BOURNE: J. Rock. Seeing none, thank you. Senator Chambers.

SENATOR CHAMBERS: Miss Johnson, did you say you had attended law school?

J. ROCK JOHNSON: Yes, sir.

SENATOR CHAMBERS: It would seem quite a harsh punishment to create the possibility of going to prison for 50 years for reckless conduct rather than intentional. Would it seem so to you?

J. ROCK JOHNSON: Senator, yes, it would not only seem so to me, but why I would make the recommendation that this be indefinitely postponed because of the bizarre nature and the underlying issues that have not been addressed here in terms of the relationships between the legal system and the mental health system and also other conditions. It seems as though our society has some decisions to make and that we need to make them clearly.

SENATOR CHAMBERS: So at best, this could be described as a simplistic approach to a real problem that exists, but this is a simplistic approach and does not really directly address the problem itself.

J. ROCK JOHNSON: I would certainly agree with that, and I'd call our attention to a book written by William Ryan in 1976 called Blaming the Victim. I think that applies.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 52

LB 954

SENATOR CHAMBERS: That's all that I would have. Thank you.

SENATOR BOURNE: Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Miss Johnson, what would happen, there was a, not a hypothetical; an actual incident. It was displayed as an actual incident on the record of the person getting hit in the head with the padlock. What would have happened if a State Patrol, under current law, a State Patrol officer runs in that room and that person would have hit the State Patrol officer with that padlock? I guess it would be my understanding that that totally changes the scenario. I mean, that probably wouldn't be too fair, either, on that particular person that's residing in that environment, would it?

J. ROCK JOHNSON: Senator, I can't express an opinion on that because I am not familiar with the jurisdiction of the State Patrol relative to the forensic facility, or...

SENATOR FRIEND: Well, but another testifier had mentioned that they had actually called the State Patrol in to take care of that hanger situation. I guess I would ask, if that person intentionally was waiting, or if we think that that person was intentionally waiting for those employees to come in the door and was going to assault them, why, maybe I should stop.

J. ROCK JOHNSON: Well, if I may...

SENATOR FRIEND: What I'm asking you is, why does this, why does it automatically change just because it's a state trooper? Intent is intent. I mean, I guess I am not, this Class III felony, that's pretty harsh. Darn harsh. But right now, if that State Patrol officer runs through that door, gets hit in the head with a padlock, I bet there's a prosecutor saying, guess what, I've got on the books right here the opportunity to prosecute this guy that did this for the Class II felony. Why is that fair?

J. ROCK JOHNSON: Well, I can only say that what we have heard is one individual's opinion as to what happened. I do not know what the facts are, nor...

SENATOR FRIEND: Well, I'm looking at current law right

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 53

LB 954

here, and then proposed law. And I'm telling you that it would appear to me that if that state trooper would have came in that door and that state trooper gets hit in the head with a padlock, we could have a prosecutor, a rogue prosecutor, say, you know what? This guy deserves to be in jail.

SENATOR CHAMBERS: That's where he is already.

SENATOR FRIEND: Well,...

J. ROCK JOHNSON: Because there...

SENATOR FRIEND: ...but, I am, green copy, looking at different circumstances, it appears to me.

J. ROCK JOHNSON: Again, I cannot express an opinion except to say we've been given a set of circumstances based on that individual's experience. I do not know what the protocol is for calling in the State Patrol, nor do I know what the options are for the State Patrol. Quite frankly, I was ready to hear that the State Patrol came in and Maced the individual. But I don't know those things.

SENATOR BOURNE: Okay. Further questions? Any further questions? Seeing none, thank you. Are there further opponents to the bill. Are there any neutral testifiers? Come on forward. Are there any other neutral testifiers? If you would go ahead and sign in after you testify, that would be great. If there's any other neutral testifiers, please make your way forward. Welcome.

MARY HEPBURN-O'SHEA: I am Mary Hepburn-O'Shea. Just call me Mary.

SENATOR BOURNE: Okay.

MARY HEPBURN-O'SHEA: H-e-p-b-u-r-n dash O-'-S-h-e-a. I have operated community facilities in Lincoln for 43 years. I worked at the regional center as a licensed mental health practitioner for four years, directed the mental health center covering the 17 counties of southeast Nebraska for eight years. But I have had around 3,000 people in my facilities, assisted living facilities, and we have had two murders in that time. I've been attacked three times, and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 54

LB 954

that's not bad for 3,000 people. Any city of that size may have had that. But each case is individual. I don't think you can make a judgment on it. One person who did, committed the murder was put at the penitentiary because he knew where he was, what he was doing, and he premeditated it. He had a long history of hospitalizations, but it was premeditated and he was sent to prison by the court. The other person was reacting in a delusional way and is at the regional center. So I don't think that we can make, you know, any mass decisions or gross decisions or blanket decisions. I think each case has to be individual. And if the person at the regional center is stabilized on medication and know what they're doing, premeditated, I think they should have the dignity to be subject to the same laws of anyone else. And the staff does need protection. I don't know the best way to do that. Staff training is one way, but I'm for the staff being protected. I don't know the right way to do it.

SENATOR BOURNE: Understood. Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Thank you for your testimony. I think you made an important point. If I understand you right--and correct me if I'm wrong, and I think this is valid--the laws don't change when you walk into a regional center or when you walk into a community-based provider or you walk into Burger King. The individual is governed by the same laws. The issue is, did the defendant have the intent, you know, to commit the crime, the mens rea,...

MARY HEPBURN-O'SHEA: The capacity to understand what they were doing.

SENATOR FLOOD: ...the capacity to understand what they were doing, yes. And that, maybe that decision goes to our county attorneys as whether to prosecute and ultimately our judges as whether to rule on an issue like that. So maybe we don't need this bill, but we do need our judges and prosecutors paying attention to every situation to see whether or not the defendant has the capacity to commit the crime and intentionally understands. Is that what you're saying?

MARY HEPBURN-O'SHEA: That's what I'm saying, Senator Flood.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 55

LB 954, 1044

SENATOR FLOOD: Okay. Thank you. I appreciate that.

SENATOR BOURNE: Further questions? Mary, thank you. Other neutral testifiers? Senator Jensen to close? Senator Jensen waives closing. That will conclude the hearing on Legislative Bill 954. (See also exhibits 5, 7, 31) The committee will stand at ease for ten minutes.

(RECESS)

SENATOR BOURNE: Senator Pedersen is here to open on Legislative Bill 1044. As he gets ready to testify, can I have a show of hands of those folks here to testify in support of this next bill? I see three. In opposition? I see none. So if the proponents would make their way forward and sign in. Senator Pedersen.

LB 1044

SENATOR Dw. PEDERSEN: (Exhibits 13, 14) Thank you, Senator Bourne, colleagues on the Judiciary Committee. Good afternoon. For the record, I am Senator Dwite Pedersen representing the 39th Legislative District and I am here today to introduce to you LB 1044. Last year, I was contacted by John Lehotyak, the director of the Omaha-Douglas County Victim Assistance Unit, who wanted to discuss their efforts to find ways to get additional funding for the Nebraska Crime Victims reparations program, which is administered by the Nebraska Crime Commission. At the present time, statutes allow the Department of Correctional Services to withhold 5 percent of wages from inmates who are employed in private venture operations on the grounds of our correctional facilities to be paid into the Crime Victims Reparation Fund. The victim assistance people wanted to know if work release inmates could be paying into the fund as well. In an effort to clarify whether or not this could be done administratively by the department or if it would need a statutory change, I requested the Attorney General's opinion, which was issued on January 3 of this year. I have distributed a copy of this opinion to each of you, but basically, it indicates that in order for wages to be withheld for this fund, an inmate must be working an eight hour day in a work program in an industry on the grounds of

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 56

LB 1044

the Department of Correctional Services. LB 1044 is my effort to clarify the statutes to allow the same wage withholding for inmates who are employed outside the correctional facilities for private companies, commonly known as work release. Because the Attorney General's opinion did not come down until January 3, we did not have as much time as we would have liked to run the language past the Department of Corrections and their people. As a result, the green copy of the bill apparently does not accurately reflect what we were trying to do. Since the introduction of the original bill, we have worked with the department to clarify what statutes should have been amended, and I am requesting that the committee adopt AM 2339, which makes the changes necessary to do what we intended to do. I have distributed copies of the amendment to you. At the present time, inmates who are working in private industry businesses such as TEK Industries at the Nebraska State Penitentiary, pay 5 percent of their wages into the Victims Compensation Fund. The intent of this bill is to simply require the same from the inmates who are working in the community prior to their release from prison. It is my understanding that someone from the victims assistance programs will be speaking in favor of the bill. I must also warn you that we could be in for a change in the weather, as Director Houston will be testifying in favor of this bill on behalf of the Department of Correctional Services, and that will be a first for any of my bills in front of this committee. (Laughter) I'm sure that the people from the victims programs and the director will be able to share numbers with you regarding the amounts of money currently being generated and the potential funding that could be generated if this bill were adopted. At this point, I will turn it over to them, but if you have any questions, then I may try and answer.

SENATOR BOURNE: Questions for Senator Pedersen? Senator Chambers.

SENATOR CHAMBERS: Senator Pedersen, is this bill prioritized?

SENATOR DW. PEDERSEN: No, it is not.

SENATOR CHAMBERS: You are aware that I have not been a strong supporter of this so-called victims fund down through

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 57

LB 1044

the years, aren't you?

SENATOR DW. PEDERSEN: Yes, I am, Senator Chambers.

SENATOR CHAMBERS: And you know that I have said in order for me to support it, there would have to be a General Fund appropriation instead of tacking on fees and costs and other things here and there and dribbling little bits of money into that will not be enough to really compensate any victim to any extent. You're aware of me having made that position clear?

SENATOR DW. PEDERSEN: Yes, I am, Senator Chambers.

SENATOR CHAMBERS: Now, I'm not going to go into technical things with you, but people should keep in mind how much money is going to be realized from this. What we'll want to know and to get those who are coming up here a heads up, we should know how many people are going to be on work release, how much they make on average, and how much 5 percent at maximum from those wages will go into that fund and how much it will produce. In your opinion, will it generate enough money to pay these various claims that victims are filing now?

SENATOR DW. PEDERSEN: It would help, but it would not pay them.

SENATOR CHAMBERS: What percentage do you think it will...

SENATOR DW. PEDERSEN: I don't know that.

SENATOR CHAMBERS: Okay. And that's, to give again, a heads-up to those following you who may be able to answer those questions. Thank you, Senator Pedersen.

SENATOR BOURNE: Further questions? Seeing none, thank you.

SENATOR DW. PEDERSEN: Thank you.

SENATOR BOURNE: First proponent. Welcome.

BOB HOUSTON: (Exhibit 16) Good afternoon, Chairman Bourne, members of the Judiciary Committee. I am Bob Houston, H-o-u-s-t-o-n, director of the Department of Correctional

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 58

LB 1044

Services. I am here today to testify in support of LB 1044. Currently, the only inmates who contribute to victims compensation are employed in the private venture operations. These inmates earn at least minimum wage, but generally the prevailing wage for the work they perform. A work release inmate is the only group of inmates receiving similar type of wages. This legislation would allow up to 5 percent of the work release inmates' net wages to be collected and remitted to the Victims Compensation Fund. Based on past net wages for work release, this would be an annual contribution to the Victims Compensation Fund of approximately \$95,000. The department is currently in the process of increasing the number of beds in our community centers, which will allow more inmates to participate on work release and be gainfully employed in the community. By contributing to the Victims Compensation Fund, inmates will be taking responsibility for their crimes by giving back to the community and to the victims of crime. It is our belief that these positive steps enhance inmates' reintegration into the community and public safety. With the department's efforts to increase the number of inmates on work release, the annual contribution to the Victims Compensation Fund will most likely increase. In 2004, the victim witness programs assisted over 15,000 victims in Nebraska. Victims Compensation Fund will help victims and their families cope with the immediate aftermath of crime. Although the average claim for compensation in Nebraska is between \$3,000 and \$4,000, very few victims are actually eligible to receive compensation in that it is a payor of last resort. For those inmates who, for those who do receive compensation, the fund pays for funeral expense, medical, hospital bills, and some counseling. While no amount of compensation can erase the physical and emotional trauma experienced by victims, compensation programs, this alleviates some of the financial burden. Finally, I'd like to offer a note that the department has worked with Senator Dwite Pedersen to amend this bill to clarify the application as indicated. And the department will need to make some modifications to the Corrections Information Tracking System to implement this. I'd be glad to answer any questions that you would have.

SENATOR BOURNE: Are there questions for Director Houston?
Senator Chambers.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 59

LB 1044

SENATOR CHAMBERS: Mr. Director, you said there are 15,000 claims?

BOB HOUSTON: This is information that those people who work with the victim can address closely.

SENATOR CHAMBERS: That was the number you gave us, 15,000?

BOB HOUSTON: Yes, exactly.

SENATOR CHAMBERS: And you said that under this bill if the maximum 5 percent were taken from each of these inmates, it would produce \$90,000?

BOB HOUSTON: Approximately \$95,000.

SENATOR CHAMBERS: If you multiply 15,000 times six, that would come to 80,000, so each one of those claims could get \$6.

BOB HOUSTON: Yes, right.

SENATOR CHAMBERS: See, that's the kind of thing that I'm opposed to.

BOB HOUSTON: Yes.

SENATOR CHAMBERS: When a figure is put out there, maybe one person with a claim will think, my claim can be covered. But when you look at the reality of it, it's still a sham and a hoax, and I won't be a part of it. And I'm saying it to you so if there are victims who come up here, they won't think I'm attacking them. But you're an official and you know that hoax-type programs can be put in place to give the appearance that something is being done when in reality it's not. \$90,000 won't even come close to responding to the claims that are presented, really, will it?

BOB HOUSTON: No. You're correct.

SENATOR CHAMBERS: Okay, but if you just take the figure at \$90,000, it could sound to people who are unaware of what's really involved, like there's going to be quite a bit of money available in this fund for responding to these claims.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 60

LB 1044

BOB HOUSTON: It could to some.

SENATOR CHAMBERS: And I hope that you don't feel I'm attacking you, but...

BOB HOUSTON: No.

SENATOR CHAMBERS: ...you're a big guy. You get paid and came here voluntarily, and you know that questions will be put to you, right?

BOB HOUSTON: Absolutely. Yes, sir.

SENATOR CHAMBERS: Okay. That's all I would have, though.

SENATOR BOURNE: Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Thank you for coming, Mr. Houston. It's nice to be on the same side.

BOB HOUSTON: You betcha. Thank you, Dwite.

SENATOR DW. PEDERSEN: And you have been there. I do have a question. Do you have any idea, Mr. Houston, how much money we're generating now from the people that are working on the eight-hour jobs on the inside of the facilities?

BOB HOUSTON: I do not know, but I have someone here who possibly would. Inga Hookstra is here, and she can answer that question.

SENATOR DW. PEDERSEN: Okay. I can get that information from them afterwards, and we'll just put it in the record.

BOB HOUSTON: Oh, okay.

SENATOR DW. PEDERSEN: Thank you.

BOB HOUSTON: Um-hum.

SENATOR BOURNE: Further questions? Senator Aguilar.

SENATOR AGUILAR: Thank you, Senator Bourne. Thank you for your testimony today. Why are we eliminating inmate from the institutional and traditional industry jobs?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 61

LB 1044

BOB HOUSTON: What? I'm sorry, what, oh, those are the inmates who make between 38 cents and \$1.09 per day, and so their wages are very low. The law that we have applies to those people that are in private venture making at least minimum wage, so.

SENATOR AGUILAR: Understood. Thank you.

SENATOR BOURNE: Further questions? Seeing none, Director, thank you.

BOB HOUSTON: Okay. Thank you.

SENATOR BOURNE: Next supporter.

KERRI McGRURY: Hi.

SENATOR BOURNE: Welcome.

KERRI McGRURY: My name is Kerri McGrury, K-e-r-r-i M-c-G-r-u-r-y, and I'm representing the Nebraska Coalition for Victims of Crime. I'm here to speak in support of LB 1044. The purpose of the Crime Victims Reparation Program, or better known as the Crime Victim Compensation Program, is to assist innocent crime victims who suffer bodily harm and have incurred a financial loss as a direct result of a criminal act. The eligibility requirements include financial needs tests in cooperation with the criminal justice officials. It is a program of last resort. Nationwide, the average claim is between \$2,000 to \$3,000. Nebraska is consistent with this average. In Fiscal Year 2004-05, victim assistance programs provided compensation information and assistance to over 1,800 victims of crime. Of these victims, only a very small percentage actually applied for compensation. Since the CVR program is a payor of last resort, it is our belief that even though the awards may not be high, the money may go to those who benefit the most from it. Nationwide, approximately 9 percent of all funds for compensation victims come from convicted persons. Thank you.

SENATOR BOURNE: Thank you. Are there questions? Seeing none, thank you. Appreciate your testimony.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 62

LB 1044

KERRI McGRURY: Thank you.

SENATOR BOURNE: Next proponent. Welcome.

LARRY WAGNER: Senator Bourne and members of the committee, my name is Larry Wagner, L-a-r-r-y W-a-g-n-e-r. I'm a concerned citizen, and 20 years ago, I was a, my wife was killed and there were no funds available at that time, and I feel that this is something that you should consider because it would certainly make life a little easier for family members of victims of crime. I guess that's it. Any questions?

SENATOR BOURNE: Thank you. Are there questions for Mr. Wagner? Mr. Wagner, thank you for testifying. Appreciate it. Are there further proponents? Are there any opponents? Are there any neutral testifiers? Senator Pedersen to close.

SENATOR DW. PEDERSEN: I would add just from my seat here that, remember, there's a lot of these. We're talking about inmates who are on an inmate status and we are already collecting this by law from a good many of them inmates. And this would just be putting all those that are working on outside jobs and getting money from the outside into that. Thank you.

SENATOR CHAMBERS: Can I ask him a question since he's speaking from his seat?

SENATOR BOURNE: Well, sure. Questions for Senator Pedersen? Senator Chambers.

SENATOR CHAMBERS: Senator Pedersen, if there were a constituent in your district who heard about this \$90,000 windfall and came to you and said, I need to get \$3,000 to help pay for funeral. And you say, well, on the average, you can get \$6. How do you think that person would feel? They might say, well, it would be better not to have anything instead of giving the impression that something is there when it's not. Do you understand what I'm saying.

SENATOR DW. PEDERSEN: I understand what you're talking about, yes.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 63

LB 1044, 1190

SENATOR CHAMBERS: Okay. That's all I have for Mr. Pedersen.

SENATOR BOURNE: Further questions for Senator Pedersen? Seeing none, that will conclude the hearing on Legislative Bill 1044. (See also exhibit 15) Senator Synowiecki is here to open on LB 1190. As Senator Synowiecki makes his way forward, can I have a show of hands of those folks here wanting to testify in support? I see two. Those in opposition? I see none. If the proponents would make their way forward and sign in, please. Senator Synowiecki, welcome.

LB 1190

SENATOR SYNOWIECKI: (Exhibits 17, 18) Thank you, Senator Bourne, and good afternoon, members of the Judiciary Committee. I am John Synowiecki. I represent District 7. I am distributing an amendment at the request, actually, of Senator Abbie Cornett which would include crime lab technicians in the offense of an assault using bodily fluids. She had asked that the committee consider inclusion of the crime lab technicians and incorporate them within the scope of the bill, as well. LB 1190 is offered for your consideration today. It is a bill to create the offense of assault of an officer using bodily fluids, and change provisions relating to assault by a confined person. I bring this legislation at the request of the Douglas County attorney's office, and as a result of a resolution passed by the Douglas County board, and also on behalf of the Douglas County corrections officers. The Douglas County board passed a resolution on January 24, 2006, in support of LB 1190. LB 1190 would create the offense of assaulting an officer using bodily fluids. Assault of an officer would be a Class I misdemeanor. Also, LB 1190 changes penalties related to assault by a confined person. LB 1190 would create penalties for causing another person to come into contact with a dangerous substance as defined in the bill. There will be individuals testifying after me who can give you a more complete analysis of this legislation and the demonstrated need for the provisions within this bill. I want to thank you, Senator Bourne and members of the committee, for your consideration.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 64

LB 1190

SENATOR BOURNE: Questions for Senator Synowiecki. Senator Chambers.

SENATOR CHAMBERS: Is this bill prioritized?

SENATOR SYNOWIECKI: No. It's not, Senator.

SENATOR CHAMBERS: Okay. Thank you. That's all I would have.

SENATOR BOURNE: Further questions? Seeing none, thank you. First proponent.

ROY WILSON: Good afternoon, Senators. My name is Roy Wilson, R-o-y W-i-l-s-o-n. I am presently a sergeant with Douglas County Corrections. I am also the appointed court representative for the Fraternal Order of Police, Lodge Number 8. As one of my duties as court liaison officer is to assist our county attorney's office in the prosecution of offenders that has assaulted a staff member. I also assist with an assaulted staff member and their family in coping with an assault. Not only do assault leave visual wounds on staff members, but there is also psychological stress involved. The staff member's family also suffers from psychological duress. One of the worst types of assault is the use of bodily fluids, which includes spitting, vomit, urine, or blood contact. The use of one of these fluids to assault leaves an impact not only on a staff member, but also on the family as well. This is due to the possible transference of disease or pathogens. To use as examples: There was a sergeant that was doing his rounds one evening in one of the housing units. One of the residents got up and threw a cup of urine in the sergeant's face. The sergeant contracted hepatitis C. Due to no provisions of law, the resident was not prosecuted. There was another incident where a staff member had feces spread on their face and into their eyes. During the past three years I have been working as court liaison officer, I have counted at least ten to 15 incidents per year where a resident has intentionally used spit or saliva to assault a staff member. Last week was the most recent incident. A resident gathered a large amount of saliva and hit one of our staff members with the fluid. It was fortunate the staff member was not hit in the face or eyes. During the past year, there have been two publicized incidents of attempted assault on a

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 65

LB 1190

judge and a deputy county attorney. The incident with the judge, the person jumped up on a bench and attempted to get to the judge. The other incident involved an individual that is known to us as being a violent person, and one that can and will spit. This individual got up from the defense table and went after a deputy county attorney. Explaining these recent examples should be indications that not only law enforcement officers, but those in working in jails, correction centers, juvenile detention, penitentiary, emergency care givers, along with those judicial committee are exposed to assault. During my years of community service, I had the opportunity to serve as a police officer in Pierce County and as an EMT. I was able to combine these services for almost ten years. During this time period, I made arrests where the detainee out of anger or spite would attempt to spit on either myself or fellow officers. While working on the ambulance, there had been occasions where a person became combative and would attempt to spit on caregivers. I have to admit that these incidents are not an everyday occurrence. These incidents do not happen with us continually. Unfortunately, they do happen, and there is no provision in our state laws to provide a deterrent from these types of incidents from occurring. Passing LB 1190 would help the families of those that have been assaulted. LB 1190 will be beneficial by encouraging blood testing of those that have committed an assault, and benefit at the time of the assault of a staff member, law enforcement, judicial branch, caregivers, will know if they are being infected through this type of transmission. Those that have been assaulted can begin immediate treatment and able to continue with a normal life with their families. The offender transferring the pathogen can be offered treatment. This is just not a benefit to community service providers in Douglas County, but a statewide benefit to those that protect our communities and provide care to our citizens. There may be some hesitation to passing LB 1190 for fear of abusing this provision. Checks and balances are already in place. Our judicial system has several checks and balances in place with our county attorney, city prosecutors, and our court system. Not every incident is a crime. Not everyone will be prosecuted. Not everyone will be convicted.

SENATOR BOURNE: Sergeant, the red light has been on for quite some time. If you would give us your conclusion, I'd appreciate it.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 66

LB 1190

ROY WILSON: Conclusion would be that with the passage of this existing, we're not creating a new law. We're actually expanding on those that are assaults.

SENATOR BOURNE: Okay, thank you. Are there questions for Sergeant Wilson? Senator Chambers.

SENATOR CHAMBERS: Sergeant, I was looking. Is the county attorney here?

ROY WILSON: The county attorney? No.

SENATOR CHAMBERS: Are you representing the county attorney's office.

ROY WILSON: No, sir. I'm representing the Fraternal Order of Police, Lodge Number 8.

SENATOR CHAMBERS: The reason I ask, Senator Synowiecki said the county attorney asked him to bring it. And I was wondering if he was here, and that's why I asked you that question. Thank you. That's all I have.

SENATOR BOURNE: There might be somebody from the county here. Oh, there is.

SENATOR CHAMBERS: Somebody will be, so...

SENATOR BOURNE: Further questions for the Sergeant? Seeing none, thank you. Next proponent.

LARRY THOREN: (Exhibit 19) I'm Larry Thoren, L-a-r-r-y T-h-o-r-e-n. I'm chief of police in the city of Hastings and I'm testifying on behalf of the Police Chief's Association of Nebraska in support of this. And in the interest of time, I'll be very brief. We support this bill. While LB 1190 focuses on probation, parole, corrections, and peace officers, actually no individual should have to suffer this type of behavior without the consequences of criminal law. I'd be glad to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for the Chief? Chief, how many times a year, I mean, I know this is really hard to quantify, but how many times a year does this

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 67

LB 1190

happen, do you think? I mean, I realize it's probably a different situation if it's an incarcerated individual versus, say, would happen to you out on the street. I mean, is it ten, do you think? Twenty? Fifty?

LARRY THOREN: I know police officers on the street probably experience this maybe once a month or so. Department-wide, in a custodial situation, I'm sure it probably happens more frequently.

SENATOR BOURNE: More often by incarcerated individuals?

LARRY THOREN: I would anticipate that. And we do have officers that are going through a series of blood tests for detection of communicable diseases because of this type of behavior.

SENATOR BOURNE: You bet. Further questions? Seeing none, thank you.

LARRY THOREN: Thank you.

SENATOR BOURNE: Next proponent.

JAMES MEURET: Good afternoon, committee. My name is James Meuret. I'm here on behalf of the Douglas County Attorney's Office. I'm a second-year law student at Creighton Law.

SENATOR BOURNE: Could you spell your last name for us?

JAMES MEURET: Meuret is M-e-u-r-e-t. And I'm not sure how much help I can actually be. I'm here only to lend my support and to say the county attorney in Douglas County is for this bill, so I'm not sure how many specific questions I can answer for Senator Chambers, but I'd be willing to any questions he has.

SENATOR BOURNE: Okay. Questions for Mr. Meuret. Senator Chambers.

SENATOR CHAMBERS: Mr. Meuret, you said you're a law student...

JAMES MEURET: I am.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 68

LB 1190

SENATOR CHAMBERS: ...at Creighton.

JAMES MEURET: I am.

SENATOR CHAMBERS: What year are you?

JAMES MEURET: I'm a second year. I'm on the downhill slope, now.

SENATOR CHAMBERS: Have you been enjoying your time as a law student?

JAMES MEURET: I don't, have you ever talked to anybody that has really enjoyed it, or? (Laughter) Actually, it's not too bad. Thank you for asking.

SENATOR CHAMBERS: Okay, I'm curious. Does the county attorney know that you're a law student.

JAMES MEURET: Yes.

SENATOR CHAMBERS: If there are questions you likely wouldn't be able to answer on this subject, did he tell you why he was sending you here?

JAMES MEURET: I'm here just to offer the general support of the county attorney.

SENATOR CHAMBERS: Did he ask you to speak in his behalf on the bill?

JAMES MEURET: No. I only decided to speak once you said is there anybody here from the county attorney, so I...

SENATOR CHAMBERS: Oh, so you're not here representing his office.

JAMES MEURET: Well, he told me to come down here, so, I mean, in effect, legally, would I bind him in anything, no.

SENATOR CHAMBERS: Well, when he told you to come down here, what did he tell you to come down here for?

JAMES MEURET: Offer general support for the bill, and then to also talk with Mr. Wilson and some of the other

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 69

LB 1190

proponents of the bill.

SENATOR CHAMBERS: But he didn't give you any...

JAMES MEURET: No, no. If I...no.

SENATOR CHAMBERS: ...handout or statement?

JAMES MEURET: No. No, sir.

SENATOR CHAMBERS: So you're not here to tell us why he supports it?

JAMES MEURET: No, sir. I'd just thought I'd offer you any information that I can give you on a personal basis because I work at the county attorney's office.

SENATOR CHAMBERS: Now, I know you haven't probably been, you probably have not been in a litigation situation where you were questioning people. But you know that, on occasion, a witness is allowed to speculate to help the court.

JAMES MEURET: That's correct.

SENATOR CHAMBERS: Would you speculate for me why the county attorney would send you to give general support on a bill dealing with a subject about which you are not very knowledgeable. And I don't mean that pejoratively.

JAMES MEURET: No. That's completely okay. And I want to make it clear that I didn't, I only made the decision to come up here and testify when you asked if there was anybody here from the county attorney's office, there, so to, in order to separate myself from the county attorney in that sense. I only decided to testify once I heard you ask, is there anybody here.

SENATOR CHAMBERS: I'm not criticizing you at all.

JAMES MEURET: No. I completely understand. No, uh-huh. I'm not...

SENATOR CHAMBERS: How could you give general support if he didn't expect you to come up here and say something?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 70

LB 1190

JAMES MEURET: Well, I can offer support because I've worked, I mean, I've worked generally on the bill, and part of my job as a law clerk with the county attorney is to follow the bills through the Legislature. And in my conversations with Stu and with the county attorneys that I have spoken with, I know that it has our general support. And when I say "our," I mean...

SENATOR CHAMBERS: Right. Here's the point I'm making. I'm not critical of you for coming up here because I don't see how you could give general support if you didn't come up here. It would be anticipated or implicit in his suggestion that you come to give general support that you come and sit here and say something. Otherwise, there would be no way for us to know you're giving general support. If I'm critical at all, it's of the county attorney and, frankly, I think he was afraid to face me because he was here on another bill and he didn't look too well (laughter) and I'm sure that the word will get back to him that I think he was unfair to send a law student and not even a member of his staff to support a bill which he asked a senator to introduce. So take this as one of those learning experiences, and let you know why some people say that lawyers are not really high on the food chain when it comes to eating, but they'd be high if it's in terms of their being eaten.

JAMES MEURET: I completely understand. If I could respond briefly.

SENATOR CHAMBERS: Yes. Yes. (Laughter)

JAMES MEURET: And I just want to make it (laughter) very clear that I only decided to testify once you asked. So, I mean, I don't want it be, I don't want everybody to think that he came down for me, he asked me to come down here and sit here.

SENATOR CHAMBERS: You didn't, no, you haven't done anything wrong.

JAMES MEURET: Nope. Yep. No, I understand.

SENATOR CHAMBERS: My question caused you to come up here.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 71

LB 1190

You did not voluntarily just do it. But what I'm saying, he sent you down here and said you should give general support. And my view--you didn't say this is yours--my view is that the only way we would even know that there is general support from his office is if somebody told us. Nobody other than you had been sent here to do that. You have not done anything wrong. All I say is that he sent you into a gunfight with the fastest gun in the west and didn't give you a gun. (Laughter) That's all I have, though.

JAMES MEURET: I appreciate it. Thank you very much.

SENATOR CHAMBERS: But thanks for coming up.

JAMES MEURET: No problem. Thank you.

SENATOR BOURNE: Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. I'll try not to take much time, but to add a little more to this. Do you know what this bill is about?

JAMES MEURET: Yes, sir. I do.

SENATOR DW. PEDERSEN: Have you ever worked in a jail?

JAMES MEURET: No, sir. I have not.

SENATOR DW. PEDERSEN: Have you ever had anybody urinate in a cup and throw it at you?

JAMES MEURET: No, luckily, thank God.

SENATOR DW. PEDERSEN: I've been there. I've been there for many years and I've, and I want, I really see the need for this. I don't know that this is going to be the tool or not, but we've got to do something about, it's getting worse, of people defecating in their hands and throwing it at you. Urinating when they're P.O.'d or disturbed. I've been lucky. I don't work like some of these people here that have to work an eight-hour shift. I work on a contract. I can go home, take a shower, clean up, and come right back, which I've done. It hasn't happened to me a lot, but I can think of three times, all three times where in the old C pod on top of the courthouse of Douglas County,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 72

LB 1190

but it does happen. And I think there is some seriousness to this bill that I hope the committee is going to be able to look at. And I'm using you to bounce that off so I can also get in the record. Thank you.

JAMES MEURET: Thank you.

SENATOR BOURNE: Questions for student Meuret? (Laughter)
You know, Senator Flood.

JAMES MEURET: Man, I'm getting it from all angles here. I'm not sure which way to turn next. (Laughter)

SENATOR Dw. PEDERSEN: It's good for a student.

JAMES MEURET: Do I have any allies on the committee? No?

SENATOR BOURNE: No, and I tell you, it's getting worse because I'm struggling to not be angry about this, that the county attorney wouldn't even appear on a bill that he asked to be introduced is amazing. Senator Flood.

SENATOR FLOOD: I'll withdraw my question.

SENATOR CHAMBERS: You didn't ask one. (Laughter)

SENATOR FLOOD: He reminds me of myself in law school. (Laughter) I wanted...

JAMES MEURET: You mean scared in front of a committee, because that...

SENATOR Dw. PEDERSEN: He reminds me of me going into the jail for the first time. (Laughter)

SENATOR BOURNE: No questions?

SENATOR CHAMBERS: I may as well ask the final question that's on everybody's mind. Senator Pedersen asked had you ever worked in a jail and you said no. Have you ever been in jail, and you don't have to answer that.

JAMES MEURET: On which side? As a criminal or as a law clerk?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 73

LB 1078, 1190

SENATOR BOURNE: Next testifier in support. Thank you. Next testifier in support. Testifiers in opposition? Neutral? Senator Synowiecki. He waives closing. That will conclude the hearing on Legislative Bill 1190. Senator Mines is here to open on Legislative Bill 1078, last bill of the day. If the proponents of that bill would make their way forward and sign in. All right, Senator Mines on LB 1078. Welcome.

LB 1078

SENATOR MINES: (Exhibits 21, 22) Welcome. Thank you. Mr. Chairman, members of the committee, my name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District, and I'm the principal introducer for LB 1078. The purpose of LB 1078 is to extend the sunset for the Law Enforcement Improvement Fund, that the LEIF fund, that's established in Chapter 81, Article 14, and it would extend it, the sunset, from December 1, 2007, to January 10, 2011. The Law Enforcement Improvement Fund is scheduled to expire on January 1, 2007. This fund helps pay for mandated training costs for officers who are employed by a municipality or a law enforcement agency in Nebraska. I'm offering an amendment to LB 1078 to extend the sunset of January 1, 2007, to January 10, 2008. That should be enough, I think. That would be enough. Not only in Section 81-1,413, but in Section 81-1,428, that relates to the investment of the Law Enforcement Improvement Fund and Section 81-1,429 that relates to the \$2 fee in criminal proceedings as well. Section 81-1,413 provides the tuition, fees, and other expenses incurred in the precertification and certification training of applicants through the Law Enforcement Training Center in Grand Island shall be the responsibility of the person or his or her sponsoring agent, except that through the extended sunset of January 10, 2011, such expenses may be financed through the Law Enforcement Training Center in Grand Island. That center can finance expenses through other appropriated funds as determined by the Police Standards Advisory Council in order to transition to a tuition-based system as envisioned when the Legislature passed LB 994 in the 2000 session. Unfortunately, the tuition-based system that we all envisioned at that time with passage of LB 994 hasn't had time yet to fully develop. The proposed amendment to LB 1078 would also extend the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 74

LB 1078

sunset from January 1, 2007, to January 10, 2011, for additional sections, Section 81-1,429. That again has to do with the LEIF fund fee of \$2 assessed as cost in criminal proceedings filed in all courts of the state. And Section 81-1,429 also provides that Law Enforcement Improvement Fund fee will be paid to the State Treasurer on forms prescribed by the Treasurer within ten days of the closing of each calendar quarter. The State Treasurer will credit the money to the Law Enforcement Improvement Fund. It should be noted that Section 81-1,429 provides that no such fee is collected in any juvenile court proceeding or when waived under Section 29-2,709. LB 1078 with the proposed amendment needs to pass this session so that county and municipal enforcement agencies won't have to pay additional costs of \$4,000 or more to train each officer at the Grand Island training center. Municipalities and counties are already paying significant costs to train law enforcement officers, and in light of the meth crisis facing Nebraska and other law enforcement issues, municipal and county governments need more trained law enforcement officers, not less. LB 1078 with proposed amendment extends the sunsets, again, to January 10, 2011, to provide community colleges, state colleges, and our university more time to develop curriculum that could transition the training of law enforcement officer to a tuition-based system. As you can see, there are testifiers behind me that I hope can answer any specific questions. And I would also like to offer into the record a, you can see it's quite a list of letters from law enforcement agencies across the state in support of LB 1078. That concludes my statement.

SENATOR BOURNE: Thank you. Are there questions for Senator Mines? Senator Chambers.

SENATOR CHAMBERS: Senator Mines, LB 994 was passed in the 2000 session. And between that time and January 1 of 2007, this other system was to be put in place. I am the one who offered the original bill several years ago to get rid of that \$2 fee tacked on, and there have been nothing but promises, promises, promises, then they always come in here and say, we couldn't do it in time. So now they're extending it beyond the time when I'll be in the Legislature. I think that was very canny and it was very smart. Is this bill prioritized?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 75

LB 1078

SENATOR MINES: It is not prioritized.

SENATOR CHAMBERS: I don't have any more questions. Thank you, Senator Mines.

SENATOR BOURNE: Further questions for Senator Mines? Thank you.

SENATOR MINES: Thank you.

SENATOR BOURNE: First testifier in support. You didn't send your clerk? (Laughter)

TERRY WAGNER: No, Senator, I did not.

SENATOR BOURNE: So you obviously think the issue is important.

TERRY WAGNER: Yes, sir.

SENATOR BOURNE: Sorry. Welcome to the committee. It's nice to see you.

TERRY WAGNER: (Exhibit 23) Good afternoon, Senator Bourne. My name is Terry Wagner, T-e-r-r-y W-a-g-n-e-r. I am the sheriff of Lancaster County. I appear before you today on behalf of my office, Lancaster County, and the Nebraska Sheriffs Association in support of LB 1078. I'm also a member of the Police Standards Advisory Council, which is the governing body of the Nebraska Law Enforcement Training Center, and I'll try to provide you a brief historical perspective of why LB 1078 should be advanced. As Senator Chambers alluded to, LB 994 was passed in 2000, which would transition the Nebraska Law Enforcement Training Center and the basic law enforcement training at that facility from state funding through the LEIF funds to a tuition-based funding by the student applicant. The desired effect would be to create a pool of trained, qualified applicants to draw from for job openings. Secondly, the agencies that would be hiring these individuals would not be paying their salaries and benefits while they attended training. Prior to the sunset date for LEIF funds being amended into LB 994, it was hoped that these funds could be used to assist agencies in obtaining advanced training for their officers. For the past six years, efforts have moved forward to incorporate

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 76

LB 1078

basic law enforcement training into the degree programs awarded through Nebraska's four-year and community colleges. At the time that LB 994 was passed, basic law enforcement training was 12 weeks in length. After LB 994 was passed, it was decided that a job task analysis was necessary to determine if the training being administered in Grand Island was adequate to meet the needs of Nebraska law enforcement agencies and to determine if the academic courses could be segregated out from the skills training at the academy. The goal was to allow the four-year and community colleges to incorporate those academic courses into their curriculum, thereby decreasing the length of time and the cost that a student would spend at the Nebraska Law Enforcement Training Center. After review of that job task analysis, curriculum specialists from both the colleges and the staff at the training center were able to identify approximately two weeks of academic course work that could be incorporated into the degree programs. Another result of that job task analysis was an additional two weeks of skills training for a total length of time of 14 weeks at the academy. During the transition period, it was decided the academic portion taught at NLETC would be front-loaded in that first two weeks. Thereby, students who are currently in a degree program would start at week three, and then catch up with the rest of their classmates in the skills training. At the time, only one or two tuition students were attending NLETC. The feedback from those students was that starting at week three was not very beneficial to them, and they really think that they should start at the beginning of the training program. The second unintended consequence of the LEIF fund sunset date was the other mandated training that's required of officers who are promoted to supervisory management positions, instructor certification, and those kinds of training that heretofore were paid for out of LEIF funds. In '07, when this fund, LEIF, sunsets, agencies will have to pay for the training for their employees. Quite simply, enough time hasn't gone by to allow the degree programs to work. I think the first students that have completed their two-year degree program have entered the training center in December, and those four students have all gotten jobs since they've been there. With that, I'll end my testimony and answer any questions the committee might have.

SENATOR BOURNE: Okay. Are there questions for Sheriff Wagner? Senator Pedersen.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 77

LB 1078

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Sheriff, is the program where the cadets, or the people wanting to be police officers, picking up some of their courses and doing some of that before they get into the academy, is that working out at all?

TERRY WAGNER: It is, Senator. As I said, it took a while to get this up to speed and get the colleges on board, to examine the courses at the training center, and then incorporate those courses into their degree programs. And the first students that have completed their two years of academic coursework at the community college, I believe it was Southeast Community College, have now entered Grand Island to complete the final phase of their degree. And those students will graduate, I believe, in April.

SENATOR DW. PEDERSEN: Has that helped at all with our numbers of getting more cops out there that are trained?

TERRY WAGNER: Well, unfortunately, we've only had four students in this basic session that are degree tuition students. We have had tuition students in the past, but these are the first ones that are part of that degree program.

SENATOR DW. PEDERSEN: Are them four hired?

TERRY WAGNER: Yes, sir, they are.

SENATOR DW. PEDERSEN: They're already hired, so they're not really people that are going through there on their own.

TERRY WAGNER: Well, as a matter of fact, I hired one of these individuals before they went, so we are paying for them while they're there. I think another one of the students is hired. While he's there, he's been offered or tendered employment, and I'm not exactly how that puts his status.

SENATOR DW. PEDERSEN: Thank you.

TERRY WAGNER: I think there are five students enrolled in the July class that are through the degree program.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 78

LB 1078

SENATOR BOURNE: Further questions for Sheriff Wagner?
Senator Chambers.

SENATOR CHAMBERS: Sheriff, if this bill doesn't pass, what happens?

TERRY WAGNER: I think a couple of things are going to happen. Number one is we're going to see a glut of applicants at the training center in the last portion of this year so agencies won't have to pay for tuition come January 1. The second thing I think is going to happen, I think you'll see certainly a lot of smaller agencies, it might break the bank. We're talking a \$4,000 tuition just for the tuition for the course. And I think that's going to be pretty prohibitive for some agencies, and I'm not quite sure how they're going to be able to afford that.

SENATOR CHAMBERS: Well, Sheriff, you're looking at it from your side of the table of law enforcement. I'm looking at it from my side of the table as a law maker and one who wanted to get that \$2 fee off those costs for many years. And I think it might have been under Senator Brashear's watch that I was prevailed on to let them get this extension. And what I think this is showing is that it's a mistake to use a methodology such as this fee system to fund something that's going to be an on-going obligation or need. So unless I die, then I don't think the bill has much prospect of passing. So, your colleagues need to consider that the moment of truth is approaching.

TERRY WAGNER: I think one of the incidents, I mean, the economic conditions of the last three or four years, the applicants that have been available has really decreased. And I think as you'll see, agencies are going to have to be willing to fork up that money, that \$4,000 tuition as a recruiting incentive. And that would be my guess.

SENATOR CHAMBERS: That's all I have, though. Thank you.

SENATOR BOURNE: Further questions? Sheriff, I was on the committee in 2000 when this, but I haven't thought about the issue much other than I recognized that it was sunsetting.

TERRY WAGNER: Yes, sir.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 79

LB 1078

SENATOR BOURNE: So in 2000, is that when the initial plan was put into place, the \$2 surcharge on the, no, it was longer than that?

TERRY WAGNER: No. The \$2 surcharge, the LEIF fund, has been around for a long time. Senator Chambers, you may remember when that was put in. It's been around for a long time. I think when the training center was initially formed back in, I'm going to say '71, '70, somewhere in that era.

SENATOR BOURNE: Okay, so we put a fee on court fees back when the training center in Grand Island was built. And then in 2000, we put the sunset on this to hopefully transition the community colleges and the four-year colleges to pick up the slack relative to training part of the police officers?

TERRY WAGNER: Partially. I think, as you recall in the committee hearings of LB 994, you know, really the prevailing thought is that lawyers, doctors, nurses, teachers all put themselves through school and then go out and find a job. Law enforcement exactly the opposite. You go find a job and then your employer pays for your wages and benefits while you're in training. The state pays for your training while at the training center, and we actually modeled LB 994 after Minnesota's plan, which has been very successful there. They have a large pool of applicants for agencies to choose from, and I actually don't know how long it took for them to transition from a state funded to a tuition funded academy, but it's been very successful. Missouri has gone to modified version of that, and we looked at a number of states' methods of training law enforcement officers, if that answers your question.

SENATOR BOURNE: So the \$4,000 pays for the 14-week course in Grand Island?

TERRY WAGNER: Correct.

SENATOR BOURNE: And then there are wages and other benefits that you pay on top of that as the county sheriff?

TERRY WAGNER: Correct.

SENATOR BOURNE: Okay, but so, and the \$2 surcharge only

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 80

LB 1078

goes to pay for the \$4,000 in tuition, and you absorb the salary through your budget?

TERRY WAGNER: Correct.

SENATOR BOURNE: Okay. Are the, part of the reason that we put the surcharge on in 2000, again, was to develop the community colleges, to have that part of their curriculum there?

TERRY WAGNER: No, sir. The \$2 LEIF fund was established when the training center was established back in the 70s.

SENATOR BOURNE: I guess I meant the sunset. We put the sunset on in 2000 to do what?

SENATOR CHAMBERS: Could I offer a little clarification? I had gotten a floor amendment to knock the fund out altogether, and I was asked to let it stay on for a certain number of years so that they could transition. And it might have been 2000 or thereabouts when it was supposed to go out...

SENATOR BOURNE: Transition to student paid or...

SENATOR CHAMBERS: ...some other way to find a way to fund it.

SENATOR BOURNE: ...okay.

SENATOR CHAMBERS: And so the deadline was approaching when, in 2000, that's why I say I think it was Senator Brashear asked that I agree not to require to fall off then as it was supposed to pursuant to that floor amendment, which had been offered some time before. So that was when that extension was made, and the argument was that they were going to put together this program that the sheriff has mentioned where they would find a way to create this pool, and they would no longer need this \$2.

SENATOR BOURNE: And you're finding that when you get recruits that there's a resistance to helping contribute to the tuition?

TERRY WAGNER: Well, certainly, and I'm speculating,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 81

LB 1078

Senator. I'm anticipating that if the LEIF funds go away, I think applicants, especially with the narrowed applicant pool we have now just because of the low jobless rate, I've got a feeling they'll shop around for agencies that are willing to pay their tuition. And that may be the necessary recruiting tool to get those people to come work for you.

SENATOR BOURNE: That was my next question. It seemed to me back then, we had testimony from some of the smaller police forces that Omaha obviously can afford to pay for their own, and then they, Omaha, in turn could also take them from Norfolk or wherever because they pay a higher wage. And the lack of the LEIF funds puts some of the smaller departments at a disadvantage, if that.

TERRY WAGNER: Well, that's true. You know, it's like any other business. The people in the job market are going want to go where they can make the most money or have the best working conditions. And so you have a lot of officers from smaller agencies that will get hired by a small agency, receive their training, their certification, and then they are much more marketable. And they will go to a larger agency like Lincoln Police, Lancaster County, or Omaha Police or Douglas County. And we pay higher wages than some of the smaller agencies. So then those original agencies have to go through the hiring process again, hire these individuals, and what the tuition-based system saves them is that three months or 14 weeks of wage and benefits that they have to pay their new officers. So, conceivably, the turnover rate wouldn't be any less, but the cost to those agencies would be less in that they wouldn't be on the payroll for that time. And once they hired them, the day they are hired, they were already certified, they could put them in their field training programs and get them to work, get them productive much quicker.

SENATOR BOURNE: So they run, what, three classes a year through the training center in Grand Island?

TERRY WAGNER: That's correct.

SENATOR BOURNE: And how many students in each class?

TERRY WAGNER: About 54, I believe, is maximum.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 82

LB 1078

SENATOR BOURNE: Fifty-four, so around 165, 170 students.

TERRY WAGNER: That's right, about 165 officers per year through the center.

SENATOR BOURNE: Okay. Further questions for Sheriff Wagner? Seeing none, thank you.

TERRY WAGNER: Thank you. The other letter that I distributed (Exhibit 24) was from the Lancaster County Board of Commissioners asked me to deliver that to you. Thank you.

SENATOR BOURNE: We have it. We'll make it a part of the record. Thank you. Next proponent.

LYNN REX: (Exhibits 25, 26) Senator Bourne, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. We're here today in strong support of this measure. Just a little bit of history here, and I'll make the operative words be "a little bit," because I think you've had a lot of history already. First of all, with LB 994, the vision of that was in effect we create more law enforcement officers in this state, a larger pool, and in fact these law enforcement officers could then help pay for a lot of their training. And I want to underscore the fact the state of Nebraska already subsidizes training, whether you're going to be an engineer, a lawyer, a teacher. Look at the amount of money the Legislature already appropriates for the university, state colleges, community colleges. So you're already subsidizing, basically, other higher ed costs. And I think that needs to be underscored. But the thought here was that, look, when someone graduates from high school, you shouldn't have to wait until you're hired by a county, a city, or the state of Nebraska. You should be able to decide, I'd like to be a law enforcement officer, put myself through that training, and then, in fact, go out and apply for jobs. Well, what's happened is several things, and I'm going to be briefly repeat what Terry Wagner said, but very briefly. That is, it took years for the community colleges, despite their best efforts, to try to put some programs together. Dennis Baack told me it was much more difficult than they thought it was ever going to be in terms of the type of training that law enforcement officers need to have in the state of Nebraska. So first,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 83

LB 1078

you have that time frame. Secondly, the Legislature was facing a fiscal crisis at that point. The Law Enforcement Training Center had one cut after another and simply couldn't do their part to try to make everything come together as well. And in addition, when LB 994 passed, the vision was never to have the fees go away. Senator Chambers was successful in putting in a sunset. And then in, I believe in 2004, LB 1162 passed to extend that sunset because once again, we're looking at a situation where higher ed is trying. It isn't they haven't tried. They continue trying. Chief Mizner will be testifying soon here, from Norfolk, and he'll tell you that they've been able to cut two weeks off of the 14-week basic training course. But essentially, this is not going to be enough for the smaller cities. In short, what I would like to say to you is this. I think that what I handed out to you today with the poll that we recently did, we had contracted out as we do many times. You'll note that the top two issues of concern to Nebraskans, the meth issue and sex offender issues, are issues of the jurisdiction of this committee. We want to commend you again for the work you've done on the sex offender issue as well as the meth issue. We know others are working on that in other committees as well, but predominantly, it's your committee doing this. These are the top two issues. You need law enforcement officers. The state Legislature, we appreciate you did in passing LB 117 last year. We think that went a long way in terms of putting pseudophedrine products behind the counter. We think they did some positive things. But in the same light, whereas we have a significant reduction in meth labs so law enforcement officers are spending less time having to deal with meth labs blowing up, it doesn't mean we have less meth. And any one of these law enforcement officers who follow me in testimony will tell you we have more meth in this state, not less. But the advantage is, we also don't have little kids around, or as many little kids around as trailers and pickups and houses are blowing up because their parents and grandparents are cooking meth. So that's a positive thing. I would also underscore the fact that small agencies, as you noted, Senator Bourne, are going to have a tremendous impact here. I mean, \$4,000 for them to pick this up in addition to the costs they're already paying makes it almost undo-able. So then you get to the point of do you even have enough law enforcement officers to have the enforcement component. And if you don't have the middle

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 84

LB 1078

piece, then do you really need to look at drug courts and meth treatment? Because if you don't have the enforcement piece, where are you going to be over here? So having trained law enforcement officers is critical, and I would commend Senator Chambers. I don't think anybody has worked harder to advocate training for law enforcement officers than Senator Chambers, which is why we hope that he will also support this measure. This is extremely important. It isn't that anyone has tried not to do it. Now, I only have one copy of this, but this is a letter from Kay Fielding, the secretary for the Police Standards Advisory Council dated December 16, 2005, indicating (Exhibit 27)...

SENATOR BOURNE: Yeah. We'll make that part of the record.

LYNN REX: ...basically an update from the sheet that's a handout on the costs.

SENATOR BOURNE: Okay. Are there...

LYNN REX: Happy to respond to any questions you have.

SENATOR BOURNE: Questions? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Miss Rex, how does the state subsidize teachers' education?

LYNN REX: Well, I have a teaching degree. They certainly subsidized that. Look at the amount of money that goes into appropriations to the University of Nebraska, and that goes for...

SENATOR Dw. PEDERSEN: To train teachers. My daughter, I'll use her for example, because she happens to be a teacher. She went to college and she paid her own way all the way through. She had no state subsidy whatsoever. She came out. She had her degree. She went to work. She had no help whatsoever from the state. Don't most teachers do that?

LYNN REX: Well, I mean, I did. But let me put it in a different context. It depends on how you want to look at subsidize. I would submit to you ever time the state Legislature has looked at cutting the appropriation for the University of Nebraska, what is the first thing you hear?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 85

LB 1078

Tuition costs will increase. Why is that? Because you are subsidizing the whole educational effort to train teachers and everybody else, for that matter. So I just think that it's important that we put it in that context.

SENATOR Dw. PEDERSEN: My daughter went to a private school, so I'm not...

LYNN REX: Oh, I'm sorry.

SENATOR Dw. PEDERSEN: ...but I'm not (inaudible) necessary the private schools. This whole business that you're talking about is something that I have been involved in since I've been in the Legislature. If I had my way, I would have somebody privately go out and buy that training center, do exactly the same training, not take anything away. If anybody who wants to come in and pay their own tuition and they would load it up. There's a lot of people want to be cops. And then let the Crime Commission decide who they're going to license by testing them, doing their background search, everything else. And then we get out of this training business.

LYNN REX: Well, I think, Senator, it's a little more complicated than that. And I'm going to defer...

SENATOR Dw. PEDERSEN: Oh, sure it's complicated because it's hooked into a bureaucracy that protects itself. And I don't mind that because we've got some good cops. I'm not against the cops we have. I'm just saying if we could do into the community colleges the same thing, I don't to take anything away from the training at all that they're now getting, put out the same kind of cop, and then let the Crime Commission or the small town people decide who's going to get the license or who's going to get the badge because then it's their business. Then we're out of the training program completely.

LYNN REX: Well, and in deference to the community colleges and the state colleges, what I will underscore here is they tried. The fact that this hasn't been done in its entirety, I mean, they've made, they've tried to develop it. But it isn't that they didn't try. It isn't that the training center didn't coordinate with them. It isn't that there wasn't a concerted effort to do that. And I think the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 86

LB 1078

vision, which may or may not be flawed, but the vision was that in fact you would be able to have most of the coursework, if not all of it, done at a community college or in a state college or at the university, and then basically, you go to the Grand Island training center to do the vehicle pursuit training, to do the shooting, and all the other things that go with being a law enforcement officer. But the reality is, it was a lot more difficult to put that curriculum together than they ever envisioned. Ever. And you would need to talk to the...

SENATOR DW. PEDERSEN: You get a lot of roadblocks in there, too. But I...

LYNN REX: ...community colleges about that. But I don't think it's for lack of trying. I think they did try. I think they're continuing to try.

SENATOR DW. PEDERSEN: Thank you.

SENATOR BOURNE: Senator Flood has a question.

SENATOR FLOOD: Thank you, Chairman Bourne. Thanks, Lynn, for testifying. I was reading your handout here on page 6 and (inaudible) talks about a regulation in states. I didn't realize that police departments were required to pay the trainee their salary. I knew that a lot of departments did, but you're required by law to, or regulation, at least, to pay the police salary to the trainee while they're at Grand Island. Is that right?

LYNN REX: Yes. And that's an excellent point. And in addition to that, in some of the agencies, of course the small villages don't have the money to do it, but to have someone replace that officer necessarily. I mean, what happens in some of our entities is that the very small ones then work to try to have another law enforcement officer cover while their one or two police officers go into this training. But, for example, in Norfolk, I'm guessing that Chief Mizner would tell you that in addition to paying that law enforcement officer's salary, they also have to have somebody else cover the hours of that person.

SENATOR FLOOD: I guess my, and this may be just thinking out loud, it may not be worth even talking about. But what

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 87

LB 1078

if we, and maybe it's the law, I don't know, what if we told that trainee that had been hired by a municipality that your wages that would ordinarily be paid by your city or your county shall go to Grand Island for the 12 weeks that you're out there, you know, up to a certain amount over and above you'd get that back. I'm still for your bill, but I just want to know, is that something that we can do for the trainee, to say, hey, you know, city will pay for it, but you don't get to be paid while you're down there.

LYNN REX: Well, I would submit to you that what happens then is they just go to Omaha or another entity or the State Patrol where they don't have to do that. And the other element of this, too, is that I think as the law enforcement officers are going through this, most of our cities already have contracts. So when they pay to train them, they usually sign something like a three-year contract saying that if we're paying for you to go there, you're going to stay with the city of X or the village of X for three years. And if you don't, then you're going to reimburse us for that training amount.

SENATOR FLOOD: So you're saying they wouldn't have enough money to eat during the (inaudible).

LYNN REX: That's correct.

SENATOR FLOOD: Okay. Thank you.

LYNN REX: That's correct.

SENATOR FLOOD: That answered my question.

LYNN REX: The cities are all, I mean, heavily subsidizing this now.

SENATOR FLOOD: Okay. Thank you.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: Just a comment. I have been, during my entire time in the Legislature, opposed to the court system being used to fund things that have nothing to do with the administration of justice. And I've been opposed to these fees and, as I stated, got a floor amendment to cut them

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 88

LB 1078

out. And I still feel that way now. With all the problems that you're relating that the municipalities may have, I'm still concerned about the misuse of the court system as I view it. And they're going to have to find a way to assume that responsibility and not burden the courts. So contrary to your speculation, I will not support this bill.

LYNN REX: Well, in light of the fact that you've been the strongest advocate for vehicular pursuit training, for all of the things that come with this, this is the other side of it. And if not this revenue stream, which, by the way, has been there for a very, very long time; this did not start with LB 994...

SENATOR BOURNE: If I can just summarize your testimony, this was not a grand, well-thought out plan to transition this to a tuition based mechanism. This was just some last-minute, ill-conceived crazy idea that was issued on the floor of the Legislature to...

SENATOR CHAMBERS: No, no. My amendment didn't do this. This was done by way of a bill.

SENATOR BOURNE: Making this temporary?

SENATOR CHAMBERS: No. This stuff that they're talking about here, my amendment was, right, a floor amendment. And that's just the provocation I needed.

LYNN REX: Alan Curtis, when he was head of the Crime Commission, worked with a number of folks and came forward because the law enforcement community was trying their best to figure out ways that they could expand the pool. So other states have done something similar to this. For whatever reason, our higher ed folks have had more difficulty than other states at putting something like this together.

SENATOR BOURNE: So we're looking at, it's \$650,000 a year is what it is, 165 at \$4,000 apiece?

LYNN REX: That would roughly be it, yes.

SENATOR BOURNE: Okay. Further questions?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 89

LB 1078

LYNN REX: There's no state appropriation, obviously, with this. Thank you, Senator.

SENATOR BOURNE: Thank you. Next proponent.

SENATOR FLOOD: Mr. Chairman, for the record, Alec would be the son of the chief of Norfolk. This is a Norfolk family that we have here.

SENATOR BOURNE: Welcome.

SENATOR CHAMBERS: Then I have a question. Why is he still running around loose? (Laughter)

BILL MIZNER: Some people we just can't apprehend. (Laughter) A little better training will guide us in that area.

SENATOR BOURNE: Welcome.

BILL MIZNER: (Exhibit 28) Senator Bourne, my name is Bill Mizner. That's B-i-l-l M-i-z-n-e-r. I'm the police chief in Norfolk, and, yes, I proudly admit that my oldest son, Alec, is my son, and I trust he's doing you a good job.

SENATOR BOURNE: He is. Nice young man.

BILL MIZNER: Glad to hear that. I apologize for my voice. I'm suffering from a cold, and I'll try to make this very brief. I'm here in support of this bill primarily because I know the impact it's going to have on our local governments. From our perspective, and I've handed out a letter from our elected officials in Norfolk, they're very concerned about this from our perspective because this is going to have an impact on our local training. It will on everyone. Ours is a little more exacerbated because, as I'm sure you may be aware, just last week with the announcement that our Tyson packing plant has closed, we're not sure what impact that's going to have on us as far as sales tax receipts. We know right now for the last couple of years our sales tax has been flat. We've been reducing positions. We've been deferring capital items. My training budget right now is about \$20,000 a year. That's for an agency of about 65 sworn and nonsworn. Yes, if we hired, two, three officers, that will take 50 to 75 percent of my budget. I'm one of

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 90

LB 1078

the larger agencies in the state. I just cannot imagine the impact this will have on villages, on second-class cities, on smaller sheriff's offices. They struggle now. This is only going to make that that much worse for them. Again, I'm also on the Police Standards Advisory Council, and one thing I would like to point out is that there's been a lot of work done on the part of training center staff to try and make this work. Rick Barnica, who is the interim director right now, was serving as the assistant director, has spent a lot of his time over the last couple of years going out throughout the state attending job fairs, attending high school job information sessions, promoting the idea that high school students can get into a junior college, can sign up for this degree program, can go through the training center. They've been working very hard to try to get this to come about. It just hasn't. And I would just like to encourage you to please give us a little more time to try to get this thing to come about. I think it can if we have the time to get it going. It's going to have a huge adverse impact on a lot of communities throughout the state. And so, hopefully, the four years would give us the time to build that and we'll see where we're at there. And I'd be glad to try to answer any questions that you might have.

SENATOR BOURNE: Thank you. Are there questions for the Chief? Senator Pedersen mentioned a way to do this. I'm not advocating for it, but why wouldn't that work?

BILL MIZNER: As far as privatizing?

SENATOR BOURNE: Yeah, basically. You know, letting anybody in. It wouldn't even have to be privatized, I don't think. I mean, we have other public institutions, state-owned institutions. Why not do it? I mean, obviously you've thought of this or, you know, the powers that be have. There's obviously a problem with doing it that way, and what is that?

BILL MIZNER: Well, that was part of the reason why this attempt was made, was to try to develop a larger recruit pool to allow them to become trained first, then be able to go through and do that. It's been slower coming about, but part of the problem is that the state has standards as far as who can be a law enforcement officer and who cannot be. Those standards eliminate a number of people who can be out

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 91

LB 1078

there.

SENATOR BOURNE: Chief, when you go to, when you apply for law school, there are standards. You have to score a certain level of the LSAT. You have to have this type of undergraduate, or the same for medical school or dental school, and even some undergraduate schools. So why couldn't you set up that mechanism to qualify and then go through the Grand Island academy--do you see where I'm coming--and then present yourself to Norfolk to ask for a job?

BILL MIZNER: I do understand that. Part of the issue is the cost. For a number of years, even before this came into fruition, students were putting themselves through because they couldn't get anyone to hire them and they felt that that would be a way to kind of make them more marketable. Some were successful, some were not. Those people who are pretty sure that they can be accepted and hired, I think they will probably see about trying to pay out of their own pocket.

SENATOR BOURNE: Is there a prohibition now if I wanted to do this that I couldn't just apply myself? I have to work for you before I can get into the Grand Island?

BILL MIZNER: No. You can apply. You can pay the fee to go through the process. And then if you're accepted, you can pay the tuition yourself. That's not been very receptive. We've had not many people do that. The other issue that will make it a little counterproductive is the fact that, I think, right now, smaller agencies accuse larger agencies of basically going out and hiring those officers who are already certified. I was in that position years ago. We have a number of former officers who worked for Lincoln, for Terry's sheriff's office, for Omaha, for Lancaster County, for Bellevue, State Patrol. I know how that feels when you hire somebody, you train them, and all of a sudden they're gone and you're right back to square one. I guarantee you that if we move into this right now and have not had time to transition and try to establish it further, you're going to find active recruiting efforts on the part of larger agencies who can provide better wages, better benefits, maybe better working conditions, better opportunities for promotion. They will actively recruit those folks out

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 92

LB 1078

there. And you're going to have a very difficult time for a number of areas in the state for those agencies to be able to get officers and actually get them in there working. It's going to be very difficult.

SENATOR BOURNE: Makes sense. Further questions for the Chief? Seeing none, thank you.

BILL MIZNER: Thank you.

SENATOR BOURNE: Next testifier in support.

LARRY THOREN: (Exhibit 29) Larry Thoren, L-a-r-r-y T-h-o-r-e-n, police chief, city of Hastings, testifying in support on behalf of Police Chiefs Association of Nebraska. It should also be noted that the Sheriffs Association, also the Police Officers Association of Nebraska supports this bill. And not to be redundant, let me address a few things. I testified earlier about the ability to be able to obtain information on candidates for policing. And my concern is that we privatize this, or if we go strictly tuition, that we'll have people attending the academy that we'll be teaching them police techniques; we'll teaching them shooting; we'll be teaching them driving, emergency vehicle driving, that shouldn't be learning those skills. And a concern that we will be giving future or potential criminals many of the techniques that police officers are trained in. Again, you know, the number one priority of police administrators is hiring the right people for your department and for your community. And I would not want to be put in the position where you're deciding between one candidate that may be a little less quality than another candidate, but that candidate has already been through academy, and I'll save \$4,000 plus 14 weeks' salary and room and board, and choose that candidate rather than a candidate that is much better quality of our community. And I don't think I would make that decision, but I don't want to be put in that position, you know. We came to the Legislature in 2000 with the intent of improving how we train police officers and improving the pool of police officers for policing. And quite frankly, and I've also testified on other bills about, we're always worried unintended consequences. Well, the LEIF fund going away and switching costs from the state level to a local level is an unintended consequence. I'm confident that when police training became

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 93

LB 1078

mandatory in Nebraska, that's when the LEIF fund was applied to offset those expenses. And I'll be glad to answer any questions.

SENATOR BOURNE: Questions for Chief Thoren? Seeing none, thank you.

LARRY THOREN: Thank you, sir.

SENATOR BOURNE: Next testifier in support.

WILLIAM MULDOON: Good afternoon, Senator Bourne and members of the Judiciary Committee. I'm William Muldoon. I'm the chief of police of Nebraska City. My last name is M-u-l-d-o-o-n. I mailed a letter to go into the file, and I'm not going to repeat any information that you've heard except to say that tomorrow morning, we'll be giving a civil service test in Nebraska City to hire a replacement officer. Of the 25 applicants that I've been told may show up to take the test, only one is a Nebraska certified person. And I think the reality here is this pool that was supposed to be created, I should have people that are applying that already have this precertificate or have already gone through this higher education option so that I would have something to select from. That's not what I'm going to see tomorrow morning when I come. The reality is, only one of them will be a Nebraska certified person. I do not know why they left their department or maybe my department pays better than where they're coming from. I'm not sure. I won't know that for some time. But the reality is that if the one of the 24 are selected, it's going to be incumbent on the city of Nebraska City to send them through, pay, right now, it's currently agreed that I'll be paying their wages. I'll be paying their meal plan. I'll be paying their transportation to go out there. It's a very expensive thing, plus I'll be waiting 14 weeks before I get this person back and can put him into a patrol car. And at that time, it may go into a ten-week FTO, and there are agencies around my town that do look to, first of all, see, you know, how do these officers integrate? Are they good officers? Do they have good reputations? And then when they have a vacancy on, you know, the larger agency, they go and cherry pick, you know, from the smaller agencies. And they do usually offer something better, maybe a take home car, whatever the case. Who knows. But I think that's really going to take off if

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 94

LB 1078

we do not do something about the sunseting of the LEIF fund because right now that's creating our pool of Nebraska certified officers that we are able, those of us agencies that do hire people without prior training, send them through. At least we don't have that expense. And now that's going to be something new, and it will be the taxpayers of Nebraska City, the property tax owners, that are going to be shouldering that. So it's going to be a shift, actually, from these \$2 docket fees to the property tax payers if another mechanism is not created. And if I could address Senator Flood's suggestion, a lot of these folks, they have families. They come take a job and you pay them an agreed upon salary. In our case, it is a training salary, which is already reduced. And then I do make them sign a three-year contract to stay with us at least those three years. Sometimes they break it. Sometimes they make it so that you want them to break it. But the point is, once you've hired somebody and, you know, it's very difficult then to make them pay their own training or pay their own education. In this era, being an employee, and you're sending them to training, usually you have to have them their salary. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Chief Muldoon? Chief, is it a straight 14 weeks, I mean, or do they for a couple of weeks and then come back? Or is it a 14-week class, straight?

WILLIAM MULDOON: It's a straight 14-week class. They come back on weekends.

SENATOR BOURNE: Gotcha. Further questions? Thank you. Next testifier in support.

BETH BAZYN FERRELL: Good afternoon, Chairman Bourne, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. I won't repeat what you've heard. We support for all the reasons you've heard. Just like to go on record as support. I'd be happy to try and answer questions.

SENATOR BOURNE: Questions for Ms. Bazyn Ferrell? Seeing none, thank you. Next testifier in support.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 95

LB 1078

ALAN BALDWIN: My name is Alan Baldwin, A-l-a-n, Baldwin, B-a-l-d-w-i-n. I'm chief of police in Seward. Just reiterating again, I'm in support of this particular enactment of \$2. The thing that concerns me the most is my budget for training is roughly \$6,000. And next year, if this goes into action, I'm probably going to have to increase my training budget by about another \$8,000 to accommodate two potential losses that would occur periodically. That's about, on an average, we're going to lose one to two officers. We're only an 11-person department. That includes two civilians, so that training budget has to spread upon everybody who, off the \$6,000, earlier. The concern about \$8,000, I know the city is not going to give me an additional \$8,000, so what that means is that I'm going to have to decrease other services that we might be providing. And the other point that I've heard at different times being discussed is, by theory, when you request these employees, or these police officer candidates to go through school and to get higher education, when they come back, they're going to expect higher salaries. So the way I look at it, we either pay for them in a system, go through basic training right now at a lower fee, or we pay them a higher fee once they come on, and then we're stuck with that higher fee for years of salary, increased salary, because they're not going to be willing to come on for \$11 an hour if they would have just invested \$8,000 to \$10,000 to \$20,000, or \$10,000, let's say, to go through basic training. We've got plus-\$4,000, it's roughly \$8,000 to go through basic training. And, so, when they come back out, they're going to want a higher salary to accommodate and pay for that where they're gone, so we'll pay for it now or we pay for it longer, more.

SENATOR BOURNE: Thank you. Are there questions for Chief Baldwin? Is the \$11 an hour, is that an average starting salary?

ALAN BALDWIN. No. I was just throwing numbers up.

SENATOR BOURNE: Okay. All right. Further questions? Thank you. Next testifier in support.

JOE KOHOUT: Chairman Bourne, members of the Judiciary Committee. For the record, my name is Joe Kohout, K-o-h-o-u-t, registered lobbyist appearing on behalf of the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 96

LB 1078

Fraternal Order of Police, Nebraska State Lodge, here to lend our support. President Grabowski had attended to be down here today, but unfortunately, due to an illness, he had to turn around and go back. So he is not able to be here. But in terms of some of the questions that have been raised by committee members, we're always willing to sit down and look at options in terms of how we can be of assistance, so I would throw that out.

SENATOR BOURNE: Questions for Mr. Kohout? Senator Chambers.

SENATOR CHAMBERS: Who did you say was coming down?

JOE KOHOUT: Steve Grabowski.

SENATOR CHAMBERS: Oh, and he got ill and had go around back?

JOE KOHOUT: Yeah, he was ill and wasn't able to come down today.

SENATOR CHAMBERS: Did he tell you what he had?

JOE KOHOUT: No, he did not.

SENATOR CHAMBERS: He didn't say it was "Ernie-itis," did he? (Laughter)

JOE KOHOUT: No, no, no.

SENATOR CHAMBERS: We get along very well.

JOE KOHOUT: No, I think he was looking forward to the exchange, Senator Chambers.

SENATOR Dw. PEDERSEN: Ernie-itis.

SENATOR CHAMBERS: I know, but we do.

SENATOR Dw. PEDERSEN: I'm beginning to get a little bit, though.

SENATOR BOURNE: Thank you. I have that every day. (Laughter)

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 97

LB 1078

SENATOR FRIEND: I've got it right now. (Laughter)

_____: Is that what that is?

SENATOR BOURNE: Further questions? Thank you, Joe. Next testifier in support.

MICHAEL NOLAN: Senator Bourne, members of the committee, my name is Michael Nolan. I'm the city administrator of Norfolk. You spell the last name N-o-l-a-n. I just want to kind of reemphasize the point the chief of police made, and I don't want to sound like I'm a poster child and woe is us, but we've got a lot of complexity we're trying to dig out from underneath right now and sort through the implications of this combination of things that made our budget kind of flat anyway before this happened. And this is going to be fairly interesting. The Chinese curse is, may your life be filled with interesting times, and I think we're faced with them. So anything that adds more complexity to our budget, obviously, I want to try to avoid. So I really, wholeheartedly supported this measure and hope that you'll support the police. Thank you.

SENATOR BOURNE: Questions for Mr. Nolan? Senator Chambers.

SENATOR CHAMBERS: Are you aware that dealing with complex issues staves off Alzheimer's? (Laughter)

MICHAEL NOLAN: It really does, Senator. Of all the problems I have, I don't think that's going to be one of them, Senator. I thank you.

SENATOR BOURNE: Mr. Nolan, what have you seen, over the last few years, obviously, the state has had some pretty significant budget problems, and one of the things we did to respond to that is cut aid to municipalities. What has Norfolk seen terms of either percent or actual cuts of money that came from the state historically?

MICHAEL NOLAN: We've had a lot of, we've had the same old commiseration that everybody else has had on trying to sort through some tracking reliability on the LB 775 refunds as being one of the issues that we've had. Obviously, our state aid is winnowed down to where it's, right now, it's

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 98

LB 1078

really significant given the margins that we're dealing with. But in terms of a revenue line item, it's down substantially. And of course, at the same time, we're dealing with some things that the state hasn't had anything directly to do with that, just simply because of, like the evolutions of the digital economy have had some impacts on us. And by that, I mean the land line phones are dropping like buffalo. People are going to cell phones only. That has an impact on our franchise taxes and on our E-911 fees and whatever. So all of those things, when you put them in the composite are pretty significant, so.

SENATOR BOURNE: So at the same time, you've had revenue drop to the city, lost state aid, your costs are going up, cost of heating the buildings, costs to run the patrol cars,...

MICHAEL NOLAN: And of course, the one thing on the...

SENATOR BOURNE: ...and losing a major industry in your community.

MICHAEL NOLAN: Right. And one thing on the expenditures side, and you'll not hear me, Senator, bemoan the fact that Nebraska has a comparability statute. You won't hear me say that because I understand the value of that in terms of stabilizing relationships between management and employees. But as you well can understand, that whole standard of comparability has a compounding effect on it, and it's something that we all have to do every year. And it, the salaries, the expenditure side doesn't go down when the revenue side does, so. And you have to have, I mean, one of the things I think is going to happen, this is the third time I've through it with this beef packing company, but this is the worst of the lot. And somebody compared it to Iwo Jima the other day. And I said, no, it's more like Hiroshima, and I wasn't trying to hyperbolize, but I think that may, in fact, put, it ends up being like. At the same time, if that creates some more pressure on the law enforcement side of the budget, we're going to have to maintain the complement of employees that we've got. And we continue to have to incrementalize those salary and benefit adjustments because comparability requires us to do that. And we obviously would do that, anyway, because it makes sense if we're trying to keep trained and competent officers

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 99

LB 1078

in Norfolk as opposed to being lured away to some other community.

SENATOR BOURNE: Further questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Michael, the LEIF funding is just one problem in an array of funding concerns that law enforcement have right now.

MICHAEL NOLAN: Right.

SENATOR FLOOD: If you had your choice between extra taxing authority for only law enforcement purposes, and I'm talking about drug task forces, making training money available, and, you know, very specific law enforcement related purposes, do you think, and which one would you pick? This bill, or a little extra authority to make sure you can get money for law enforcement to pay for everything that you've got right now?

MICHAEL NOLAN: Well, I wish I could answer that bill, Senator, in an either-or...

SENATOR FLOOD: And that's a tough question, and I recognize the implication of it, but...

MICHAEL NOLAN: Quite honestly, the easiest answer would be to say, "and both," you know. And I say that simply because I think the most insidious thing that has happened to the culture in years, and I don't have quite the same, I guess, proximity to Iowa that South Sioux does, which makes their choice of that, being a sex offender issue, but this meth is the nastiest thing that has happened to rural Nebraska in my time in city administration. I've been a city administrator there for 26 years. I've got people on my staff who have kids who are meth addicts. The Chamber director, one of his sons has been a meth addict. It victimizes a lot of people, and it crosses all the, what you would think would be the normal demographic differences. It doesn't have anything to do with socioeconomic classes. It's just a nasty thing, and we're only beginning, I think, to figure out how to respond to it. And law enforcement, obviously, is a major element in how we respond to it.

SENATOR BOURNE: Further questions? Seeing none, thank you,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 100

LB 1078

Mr. Nolan. Other proponents? Are there any opponents? Are there any neutral testifiers? Senator Mines to close.

SENATOR MINES: Thank you all for your patience. How I've missed sitting on this sitting on this committee. Let me just say that just sitting there listening to testimony, it's pretty clear in my mind that it's the smaller communities that take a hit if the LEIF fund goes away. I was told that 240 of the 532 municipalities are at their levy limit already. And most of those, obviously, are the little guys. And I think the LEIF fund if were to go away, that's who we penalize. Now, the funding mechanism certainly is at issue here. And I'm not sure that there's a fix for that in this, today. But I think it deserves evaluation. But I'd hate to see us flush an innovative program that hasn't performed to expectation, however, has performed, and it may take us a while to get there. I just, I'd hate to see this thing go away for any number of reasons. Senator Flood brought up a local taxing authority. If you were to give municipalities and counties an ability to tax locally, whether sales or property, that's interesting. Again, you've got half your cities up against the levy limit right now. They can't adjust. That might be an option. I just think it's, we're hurting the small guys in this, and I'd like to see some strong consideration and approval from this committee. Thank you very much.

SENATOR BOURNE: Questions for Senator Mines? Senator Chambers.

SENATOR CHAMBERS: This is known at the LEIF fund, right?

SENATOR MINES: LEIF fund, yes, Senator.

SENATOR CHAMBERS: You know, a lot of times, I'm inspired to sing when an issue is appropriate.

SENATOR MINES: I apologize for this.

SENATOR CHAMBERS: So here's what you have. The falling LEIF drifts by my window. That means it's gone.

SENATOR BOURNE: Other questions or songs for Senator Mines? Senator Friend.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 24, 2006
Page 101

LB 1078

SENATOR FRIEND: I don't have a song. Senator Mines, you find an aircraft carrier on the floor for this and we may see it again. (Laughter)

SENATOR MINES: Thank you very much.

SENATOR BOURNE: Let me ask you a quick question. You have experience in state government, and I'm going to keep the committee here for just minute longer. You say that all of these communities are up against their levy limits, right?

SENATOR MINES: Right.

SENATOR BOURNE: The revenues budget is coming out leaving the \$1.05 in place, but reducing ag ground to 75 percent of value. What is that going to do to communities?

SENATOR MINES: Well, ag ground isn't included in municipal taxation, no. And the \$1.05 for schools doesn't impact. Municipalities have a 45 cent levy limit, and, you know, with interlocal agreements, you can jack that up to 50 cents. But a lot of these little folks don't have anybody to do an interlocal agreement with. So they're up against the 45 cents, nowhere to go, and that's a whole separate dialogue that we ought to have some day about looking at local levies, local spending, and then, as you had mentioned, state aid has been withdrawn in the millions of dollars to aid to municipalities, so. I mean, these guys are getting hit from all directions, and this is one part of that whole problem.

SENATOR BOURNE: Fair enough. Further questions? Thank you. That will conclude the hearing on Legislative Bill 1078 and the hearings for this afternoon and the hearings for this session. (See also exhibit 20)